



မင်္ဂြေနံခြံ ပြား ဆုံမြံသာ THE ANDHRA PRADESH GAZETTE PUBLISHED BY AUTHORITY

W.No.16

AMARAVATI, WEDNESDAY, APRIL 24, 2024

G.75

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Rc.No: 667/2024-A5. Dt: 15-03-2024.

SUITS - GUNTUR DISTRICT - COURT ORDER'S IN CERTAIN INSOLVENCY PETITIONS IN SEVERAL I.P. Nos. - 53/2020, 32/2021, 23/2022, 39/2016, 18/2023, 29/2020, 38/2023, 56/2021, 76/2022, 26/2022, 90/2022, 62/2021, 16/2021, 58/2022, 44/2014, 17/2020.

SI.	Name of the	I.P. No	Order Date	Dis No.	Petitioner	Insolvent
No.	Court	1.587				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Additional Senior Civil Judge Court, Guntur	53/2020	18.11.2023	63	Gorijavolu Srikanth, S/o Rajendra Prasad, R/0 D.No. 4-5- 10/13/1, 4/1 Vidya Nagar, Guntur	Gorijavolu Srikanth, S/o Rajendra Prasad, R/o D.No. 4-5- 10/13/1, 4/1 Vidya Nagar, Guntur
2	Additional Senior Civil Judge Court, Guntur	32/2021	22.08.2023	65	Arisetty Gopi S/o Venkateswara Rao, R/o Door No. 11-4- 156, 2nd Line, Rajagarithota, Guntur.	Arisetty Gopi S/o Venkateswara Rao, R/o Door No. 11-4-156, 2nd Line, Rajagarithota, Guntur.
3	Additional Senior Civil Judge Court, Guntur	23/2022	26.09.2023	68	Velpuri Bhavani Devi, W/o Siva Subramanya Prasad, R/o Door No: 25-18-3A, Nallacheruvu, 0/8, Line, Gunutr	Velpuri Bhavani Devi, W/o Siva Subramanya Prasad, R/o Door No: 25- 18-3A, Nallacheruvu, 0/8, Line, Gunutr

4	Additional Senior Civil Judge Court, Guntur	39/2016	25.08.2023	66	Shalk Vijaya Babu, S/o Nagoor Saheb, R/o Chamallarnudi Village, Vatticherukuru Mandal Guntur.	Inaganti Babu Shaik Babu, S/o Nabi Saheb, R/o D.No. 11- 71, Sivalayam Veedhi Kummari Bazar, Ganapavaram Village, Nadendla Mandal, Guntur District.
6	Additional Senior Civil Judge Court, Tenali.	18/2023	31.10.2023	943	Sami Srinivas, S/o Krishna, Markendeya Veedhi, Salipeta, Tenali Town, Guntur District	Sami Srinivas, S/o Krishna, Markendeya Veedhi, Salipeta, Tenali Town, Guntur District
	Senior Civil Judge Court, Tenali.	29/2020	30.10.2023	832	Kadapa Venkateswara Rao, S/o China Sambaiah, R/o. Nehruvari Street, Rajakapeta, Tenali Mandal, Guntur District.	Kadapa Venkateswara Rao, S/o China Sambaiah, R/o. Nehruvari Street, Rajakapeta, Tenali Mandal, Guntur District.
7	Additional Senior Civil Judge Court, Tenali.	38/2023	10.11.2023	858	Kesamsetti Venkatesh S/o Late Srinivasa Rao, H.No. 31-1-4, Kumar Colony, Chenchupet, Tenali, Presently Hyderabad).	Kesamsetti Venkatesh S/o Late Srinivasa Rao, H.No. 31-1-4, Kumar Colony, Chenchupet, Tenali, Presently Hyderabad).
8	Additional Senior Civil Judge Court, Tenali.	56/2021	06.11.2023	859	Kaviyarasan Murugesan S/o Muruggan, R/o. D.No. 1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenall.	Kaviyarasan Murugesan S/o Muruggan, R/o. D.No. 1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenall.
9	Additional Senior Civil Judge Court, Tenali.	76/2022	15.11.2023	877	Munnangi Kotireddy S/o Chinnapa Reddy, R/o. Nandulapeta, Tenali.	Munnangi Kotireddy S/o Chinnapa Reddy, R/o. Nandulapeta, Tenali.
10	Additional Senior Civil Judge Court, Guntur.	26/2022	21.10.2023	70	Ganesh Traders, rep. by its Uppu Sai Eeswari, W/o Satyanarayana, R/o Door No. 25-16-277, MD Nagar, Guntur	Ganesh Traders, rep. by its Uppu Sai Eeswari, W/o Satyanarayana, R/o Door No. 25-16-277, MD Nagar, Guntur
11	Additional Senior Civil Judge Court, Guntur.	90/2022	23.11.2023	71	Shaik Imamsa S/o Salam, R/o Door No. 8- 27-24, BTR Nagar, 1st lane, Kakani Road, Guntur.	Shaik Imamsa S/o Salam, R/o Door No. 8- 27-24, BTR Nagar, 1st Iane, Kakani Road, Guntur.
12	Additional Senior Civil Judge Court, Guntur.	62/2021	21.10.2023	72	Shaik Jani Basha S/o Lhaja, R/o Door No. 16- 27- 112, 1st lane, Magdum Nagar, Old Guntur, Guntur.	Shaik Jani Basha S/o Lhaja, R/o Door No. 16-27- 112, 1st lane, Magdum Nagar, Old Guntur, Guntur.
13	Additional Senior Civil Judge Court, Guntur.	16/2021	15.12.2023	73	Harimanikayam Chandra Babu S/o VenkateswaraRao, R/o Door No. 16-27- 148/1, 1st Lane, Surya Nagar, Kothapeta, Old Guntur, Guntur.	Harimanikayam Chandra Babu S/o VenkateswaraRao, R/o Door No. 16-27-148/1, 1st Lane, Surya Nagar, Kothapeta, Old Guntur, Guntur.
14	Additional Senior Civil Judge Court, Guntur.	58/2022	21.12.2023	74	Dudekula Khasimbi W/o Kamathaiah, R/o #24- 16-1/A, 5th Line, Nallacheruvu Guntur.	Dudekula Khasimbi W/o Kamathaiah, R/o #24-16-1/A, 5th Line, Nallacheruvu Guntur.
15	Additional Senior Civil Judge Court, Guntur.	44/2014	31.08.2023	67	Vasantha Srinivasa Rao, S/o Sambaiah, R/o Ananathavarappadu Village, Vatticherukuru Mandal, Guntur	Bonthu Suneetha, W/o Venu Babu, R/o Flat No. 302.Ambica Paradice, Near Vignan College, Palakaluru Road, Palakaluru Village,Guntur.
16	Additional Senior Civil Judge Court, Guntur.	17/2020	13.10.2023	69	Abbarla Chinna Narasimha Rao, S/o Pamuleti, Flat No. 504, Thulluri Towers, Morriespet, Tenali,	Kola Chitti Babu, S/o Nalla Pinnaiah @ Pinnaiah, R/o 11-71/1, Vejendla Village, Chebrole Mandal Guntur.

I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

INSOLVENCY PETITION NO.53/2020

Between:

Gorijavolu Srikanth, S/o Rajendra Prasad, Hindu, aged about 39 years, ideal, R/o D.No.4-5-10/13/1, 4/1 Vidya Nagar, Guntur.

...PETITIONER.

AND

- 1. HDFC Bank Ltd., Lakshmipuram Branch, Guntur rep.by its Manager, Hindu, S/o Not known, Aged about not known, Employee, Lakshmipuram main road, Guntur.
- 2. Axis Bank, Koramangal Branch, Bangalore, rep. by its Manager, S/o not known, aged about not known, Employee NO.119, Industrial Layout, 80 ft road, 7th block, Koramangal, Bangalore, Karnataka State.
- 3. Axis Bank, Lakshmipuram Branch, Guntur, rep. by its Manager, Hindu, S/o Not known, Aged about not known, Employee, Lakshmipuram Main Road, Guntur.
- 4. Bajaj Finance Ltd., Rep. by its Manager, Hindu, S/o not known, aged about 34 years, Business, R/o 5-37-155, $1^{\rm st}$ floor, Supriya Towers, $4/15^{\rm th}$ line Brodipet, Guntur.
- 5. Immadisetty Vamsi Krishna, S/oHari Prasad Rao, Hindu, aged about 37 years, Employee, Flat No.301, Sirigiri Towers, Court Center, Lawyerpet, Ongole.
- 6. Lavu Jaya Sree, W/o Surya, Hindu, aged about 39 years, Business, R/o 2nd line Krishna Nagar, Guntur, Guntur District.

...RESPONDENTS

This petition coming before me on 3.11.2023 for final hearing in the presence of Sri N. Chalapati Rao, Advocate for petitioner and Petition against respondents 1 to 4 was dismissed respondents 5 & 6 are remained exparte; and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition filed under Section 10 of Provincial of Insolvency Act (for brevity, "the Act") to declare the petitioner as an insolvent.
- 2. Main case of petitioner, in brief, is that,
 - i) he is a network engineer. After finishing his education, he worked as a programmer for Qwest Software Services from October 2010 to December 2012. Later, he joined Spartan Software Services from 2013 to 2016. Thereafter, again, he joined Vest Bangalore in 2016.
 - ii) He has a savings' bank account and credit card in the first respondent bank. Similarly, he has a salary account and credit card in the second respondent bank. The petitioner is financially self-sufficient during his job and has hence been approved for various company credit cards based on his credit score. Therefore, he used credit cards for his daily needs, and he repaid them regularly.
 - the unfortunate medical circumstances that arose for him. His family supports his health problems and takes care of his health. Under the circumstances, he obtained a personal loan for his medical necessity and also borrowed amounts from individuals, i.e., from the fifth and sixth respondents. Taking undue advantage of his financial status, the respondents have lent amounts for interest on a monthly basis, and some of the respondents put conditions that they wanted his signature on promissory notes and cheques. Subsequently, he used to pay interest and loan amounts to the respondents every month as per their terms and conditions. Due to huge interest payments, the petitioner is not able to look after the welfare of his family and his health properly.

He had several financial disturbances, and he is unable to satisfy the respondents.

- iv) After his resignation from his job, he is doing work contracts from his house and has paid all the installments and interest up to March 2020. Later, due to COVID-19 and the national-wide lockdown, he could not discharge the amounts. He has lost everything, and he has stopped his work for about 6 months. At present, he has no source of income. But the recovery team of respondents 1 to 4 used to threaten him to repay the loan and credit card amounts with interest. His liabilities exceed his properties. Hence, he filed the present petition to adjudge him insolvent.
- 3. On the other hand, respondents 1 to 3 resisted the claim of petitioner by filing counter. Main case of respondents, in brief, is that:
 - i) they are companies, and therefore, the present I.P. is not maintainable against them.
 - ii) The petitioner concealed valuable information and did not comply with provisions of the Provincial Insolvency Act. With an intention to escape liability, the present petition is filed. Hence, he urged the court to dismiss the petition.
- 4. It is the matter on record that petitioner not pressed the petition against respondents 1 to 4. Hence, petition is dismissed against respondents 1 to 4 as not pressed.

5. Now the point for determination is:-

"Whether the petitioner is entitled to be declared as an insolvent as prayed for?"

6. During course of enquiry, petitioner examined P.W.1 by reiterating averments of petition in his chief examination affidavit. No document is marked. Respondents did not adduce any evidence.

- 7. Heard arguments.
- 8. Perused the record.

POINT:-

- 9. This petition filed under Section 10 of Provincial Insolvency Act. So, it is necessary to go through the prerequisites laid down under Section 10 of Provincial Insolvency Act to enable the debtor to file petition. Relevant portion of Section 10(1) reads as follows:
 - Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."
- 10. The very beginning words of section 10 (1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 11. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing the petition the court shall require proof of the following matters:
 - (a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

- Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."
- 12. When I.P. filed by debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 13. On combined reading of section 10, 24 and section 25(2), it abundantly clear that petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify existence of prima facie grounds for considering the plea of debtor to declare him as an insolvent.
- 14. At this juncture, it is relevant to go through Judgments of our High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

15. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another², the Hon'ble High Court held that,

"A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt."

16. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

"the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities."

17. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others ⁴, the High Court was pleased to examine the provisions of Insolvency Act

^{1 2002 (3)} ALD 456

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

extensively with emphasizing on Sec. 10 and Sec. 24 of the Provincial Insolvency Act. Ultimately, it was held that,

"even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent."

- 18. On the touchstone of these legal principles, this Court shall now proceed to test the case of petitioner/debtor.
- 19. It is the case of petitioner that, due to ill health, he resigned his job and used to do contract work from his house. But, due to lockdown and the COVID-19 pandemic, he stopped all his work, and he has no income sources. Therefore, he could not realize the debts of respondents. Further, it is his case that respondents pressurized him to repay the due amounts and threatened him, and that his liabilities exceed his assets; hence, he urged the court to adjudge him as insolvent.
- 20. Adjudication of any person as an insolvent is a harsh remedy and mere asking said relief. Moreover, it cannot be granted unless prima facie satisfaction that his liabilities exceeded his properties.
- 21. No doubt, as per Section 10 of the Act, where debts of the petitioner exceeded Rs.500/-, undoubtedly, he can file a petition to declare him as an insolvent. Similarly, when his assets are not sufficient to discharge his debts, he can file petition to declare him as an insolvent.
- 22. In the present case, petitioner averred that he is indebted to respondents 1 to 6 shown in petition A schedule and his assets shown in

^{4 2005 (1)} ALT 407

petition B schedule. For better appreciation of the case, petition A schedule is reproduced hereunder:

'A' schedule

SI.No.	Name	Nature of the debt	Amount due in Rs.
1.	HDFC Bank Ltd.	Credit Card	Rs.1,29,489-00
2.	HDFC bank Ltd.	Jumbo Loan onCredit Card	Rs.16,140-00
3.	Axis Bank	Credit Card	Rs.90,000-00
4.	Axis Bank	Personal Loan	Rs.2,22,765-00
5.	Bajaj Finance	Personal Loan	Rs.2,55,924-00
6.	Bajaj Finance	Digital Product finance	Rs.43,683
7.	Immadisetty Vamsi Krishna	Promissory note and 1 blank chequeqq	Rs.4,00,000-00 +interest from 11 months is pending
8.	Lavu Jayasree	Promissory note and 1 blank cheque	Rs.75,000-00 +interest has to pay from March, 2020 i.e., 8 months pending.
		Total :	12,33,001-00

- The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 12,33,001/-. Even after excluding the debts of respondents 1 to 4 against whom this petition is dismissed, the petitioner is owed Rs. 4,75,000/- (Rs. 12,33,001 Rs.7,58,001). Now the question is: whether his debts exceed his properties?
- 24. The petitioner showed his properties in the petition 'B' schedule property. As seen from the petition B schedule, immovable property, debts, and cash (B1 to B4) are shown as nil.
- 25. It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.

- 26. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.
- 27. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court, on this the $18^{\rm th}$ day of November, 2023.

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge,

Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:-

P.W.1: Gorijavolu Srikanth

For Respondents:-

None

DOCUMENTS MARKED

For Petitioner:-

Nil

For Respondents:-

Nil

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge, Guntur.

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I ADDL. ŠENÌOR CIVIL JUDGE, GUNTUR.

I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Tuesday, the 22nd day of August, 2023

INSOLVENCY PETITION NO.32/2021

Between:

Arisetty Gopi S/o Venkateswara Rao, Hindu, aged about 31 years, Business R/o Door No.11-4-156, 2nd Line, Rajagari Thota, Guntur, Guntur District.

...PETITIONER.

AND

- 1. Kasukurthi Govinda Rao, S/o Ramalingaiah, Hindu, aged about 55 years, R/o 2-245, Kantamraju Konduru Village, Duggirala Mandal, Guntur District.
- 2. Naradasu Vijaya Lakshmi, W/o Vasudeva Rao, Hindu, aged about 55 years, R/o 16-22-105, 5th Floor, Lakshmi Narasimha Enclave, Sampath Nagar, Ward No.24, Guntur, Guntur District.
- 3. Thota Koteswara Rao, S/o Late Subba Rao, Hindu, aged about 60 years, R/o Door No.7-105, Nandivelugu Village, Tenali Mandal, Guntur District.
- 4. Thota Sudhakar, S/o Rama Rao, Hindu, aged about 45 years, R/o 4-145 beside Vijaya Vani School, Main Road, Kativaram Village, Tenali Mandla, Guntur District.
- 5. Annem Guravaiah, S/o Venkata Subbaiah, Hindu, aged about 30 years, R/o Door No.7-1-7, Nandivelugu Village, Tenali Mandal, Guntur District.
- Jampala Subba Rao, S/o Hanumantha Rao, Hindu, aged about 65 years, R/o Door No.12-79, Beside Police Station, Duggirala Village and Mandal, Guntur District.
- 7. Kolakaluri Srinivasa Sharma, S/o Maruthi Rao, Hindu, aged about 40 years, R/o 7-21 Durgadevi Temple Street, Nandivelugu Village, Tenali Mandal, Guntur District.
- 8. Jampala Balananda Prasad, S/o Hanumantha Rao, Hindu, aged about 65 years, R/o Door No.12-77, Beside Police station, Duggirala Village and Mandal, Guntur District.
- Tirumalasetty Sambaiah, S/o Kondaiah, Hindu, aged about 65 years, R/o Dr.No.2-221, Anamarlapudi Village, Pedakakani Mandal, Guntur District.
- 10. Vemuri Mani Kumari, W/o Deva Kumar, Hindu, aged about 40 years, Teacher, R/o D.No.12-105, Madigapalle, Duggirala Village and Mandal, Guntur District.
- 11. Appikatla Nageswara Rao, S/o Anjaiah, Hindu, aged about 47 years, R/o D.No.2-403, Poleramma Bazar, Kaza Village, Mangalagiri Mandal, Guntur District.
- 12. Bajaj Finance Rep. by its Manager, D.No.22-4-45, Near Astalakshmi Temple, Near Courts, Tenali, Guntur District.

13. The Official Receiver, District Court Compound, Nagarampalem, Guntur, Guntur District.

...RESPONDENTS.

This petition coming on 10-05-2023 for final hearing before me in the presence of Sri Konda Subba Reddy, Advocate for petitioner and Sri M. Ratna Bhaskar, Advocate for Respondent No.3, and R1, R2, R4 to R12 are remained exparte and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
- Main case of petitioner, in brief, is that,
 - (i) the petitioner used to do pesticides business in the name and style of Ganesh Sai Durga Traders, main Road, Duggirala Village, Guntur District. For the purpose of business, he borrowed amounts from the respondents at the huge rate of interest. But, due to fluctuations in the market and due to Covid-19, he sustained heavy loss in his business. As such, he is unable to discharge the amounts payable to the respondents. Taking advantage that he has no business experience and lack of knowledge, some of the respondents cheated him and caused loss in his business. He has no source of income to repay the debt. However, for some days, he adjusted and answered them. But slowly respondents one by one are became violent and threatened him to discharge the amounts due to them. Some of the respondents tried to kidnap him. Somehow he escaped from their clutches.
 - (ii) He has no money or any other movable properties. Except B-schedule property, he has no other income source. His liabilities exceeded his assets. He is not in a position to discharge the debts. Hence, he filed the present petition to declare him as insolvent.
- 3. On service of notices, respondents 1, 2, 4 to 12 did not turn up before the court either personally or through their counsel. As such, they

were set exparte. The third respondent filed counter. He denied the averments of the petition specifically. The main case of respondent No.3, in brief, is that:

(i) with a malafide intention, the petitioner shown B-5 schedule properties in the I.P. petition. In fact, he has immovable properties at Nandivelugu Village, Guntur District. Before filing of I.P., petitioner and his family members transferred the said immovable properties in the name of Thota Sudhakar, brother-in-law of petitioner. Further, the said Sudhkar was shown as 4th respondent in the I.P. Another property was transferred in the name of Annem Guravaiah, one of the cousin brother of petitioner. He was also shown as 5th respondent. The above two transactions are benami transactions. With intend to screen away the immovable properties and cash, present petition was filed. In fact, petitioner never incurred any loss in the business. Hence, he urged the court to dismiss the petition.

4. Now the point for consideration is:-

"Whether the petitioner is entitled to be adjudged an insolvent as prayed for?"

- 5. At the enquiry, petitioner examined P.Ws.1 to 4 and no documents were marked. On the other hand, respondents did not adduce either oral or documentary evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

8. This petition is filed under Section 10 of the Provincial Insolvency Act. So, it is necessary to go through the prerequisites laid down under Section 10 of the Provincial Insolvency Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."

- 9. The very beginning words of Section 10(1) enunciates that inability to pay the debts is SINE QUA NON for filing an insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:
 - (a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

- Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."
- 11. When I.P. filed by the debtor shall be dismissed as laid down under Section 25(2) of the Provincial Insolvency Act, which reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 12. On a combined reading of Sections 10, 24, and 25(2), it makes abundantly clear that the petitioner/debtor is not entitled to be adjudged insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him insolvent.
- 13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹ wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary

^{1 2002 (3)} ALD 456

information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another², the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Provincial Insolvency Act extensively, emphasizing Sections 10 and 24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

- 17. On the touchstone of these legal principles, this Court shall now proceed to test the case of the petitioner/debtor.
- 18. It is the case of petitioner that he used to do pesticides business in the name and style of Ganesh Sai Durga Traders at Guddirala Village, Guntur District; and that for the purpose of business, he borrowed amounts from the respondents at higher rate of interest. Further, it is his case that,

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

due to lack of experience and fluctuations in the business and Covid-19 pandemic, he sustained huge loss in the business and eventually, he closed the business and now, he is not in a position to discharge the debts, as his liabilities exceeds his assets.

- 19. On the other hand, third respondent strongly denied the case of the petitioner contending that just before filing of the petition, petitioner sold his properties to his brother-in-law and cousin under registered documents with intend to screen away the same.
- 20. In view of the rival contentions of both parties and the above point, the burden of proof is heavily on the petitioner. In order to prove the case, the petitioner examined himself as PW1. He reiterated averments of petition in his chief examination affidavit. In his cross-examination, third respondent elicited the fact that PW1 along with his family members sold house bearing No. 7-109, Nandivelugu Village, to fourth respondent. Further, third respondent elicited in the cross-examination of PW1 that fourth respondent is relative of petitioner.
- 21. Besides the above, petitioner examined Govindu Venkatrao, Addanki Srinivasa Rao and Chennapragada Prudhvi Raju, as PWs 2 to 4. They supported the case of petitioner by testifying that for the purpose of pesticides business, petitioner borrowed amounts from the respondents at huge interest, but he sustained heavy loss due to lack of experience, fluctuations in the business and Covid-19 pandemic, and now he is not in a position to discharge the debts as liabilities exceeds his assets. Third respondent cross-examined them.
- In the cross-examination, PW2 deposed that before filing of this I.P., the petitioner disposed off all his properties and discharged some of his debts; and that with the said sale consideration, he discharged some of the

debts. Similarly, PW3 deposed in cross-examination that out of sale consideration, petitioner repaid Rs. 5,00,000/- to one Ratham, Rs. 4,00,000/- to one Nageswara Rao and Rs. 2,00,000/- to Vasu. Like wife, PW4 deposed that petitioner sold the properties before filing of present I.P. as he sustained loss in the business.

- 23. In addition to the above third respondent put his defence by way of suggestions. Of course, PWs 1 to 4 denied the same.
- 24. The petitioner shown his creditors in petition A-schedule. It is worthwhile to reproduce the debts show in A-Schedule properties hereunder:

SI.No.	Name of Debtors	Nature	Amount Rs. Ps.
1.	Kasukurthi Govinda Rao	Pronotes & Cheques	1,80,000-00
2.	Naradasu Vijaya Lakshmi	Pronotes & Cheques	2,00,000-00
3.	Thota Koteswara rao	Pronotes & Cheques	2,00,000-00
4.	Thota Sudhakar	Pronotes & Cheques	1,00,000-00
5.	Annem Guravaiah	Pronotes & Cheques	1,00,000-00
6.	Jampala Sambasiva Rao	Pronotes & Cheques	2,00,000-00
7.	Kolakaluri Srinivasa Sharma	Pronotes & Cheques	3,00,000-00
8.	Jampala Balananda Prasad	Pronotes & Cheques	1,00,000-00
9.	Tirumalasetty Sambaiah	Pronotes & Cheques	2,00,000-00
10.	Vemuri Mani Kumari	Pronotes & Cheques	2,00,000-00
11.	Appikatla Nageswara Rao	Pronotes & Cheques	2,00,000-00
12	Bajaj Finance Rep. by its Manager	Pronotes & Cheques	60,000-00
	Total:		20,40,000-00

25. Though the petitioner did not file any documents like counterfoil, etc., to show particulars of his debts, he furnished details of debts i.e.,

quantum of debts, nature of debts and details of his creditors in petition A-schedule. On the other hand, third respondent disputed some of the debts shown in the petition A-schedule properties.

- 26. Indisputably, third respondent has taken plea in the counter that respondents 4 and 5 are close relatives of petitioner and they were falsely shown in the petition as his creditors. Except denied the contentions of third respondent, petitioner did not place any material. For instance, the contention of third respondent is taken into consideration and debt of fourth and fifth respondents are excluded from the A-schedule, now the question is, whether the debts of petitioner exceeds his properties or not.
- As per the above petition A-schedule property, the petitioner is indebted to the tune of Rs. 19,40,000/- [Rs.20,40,000 Rs.1,00,000 Rs. 1,00,000/-(debts of fourth and fifth respondents)]. However, proof of debt of fourth and fifth respondents would arise after adjudging the petitioner as insolvent. After adjudication, debtors like fourth respondent, shall prove his debt during proceedings U/Sec.45 to 50 of the Act.
- Coming to the question, whether his debts exceed his properties, the petitioner shown his immovable properties, bank securities, debtors, and cash in hand in petition B1 to B4 schedule properties as NIL, while showing his wearing apparel, i.e., 2-shirts, 2-pants, 2-Banyans, 2-drawers and 2-towels in petition B-5 schedule property as worth about Rs.500/-. As per petition B-schedule properties, he has only wearing apparel worth about Rs.500/-.
- 29. It is clear from the above that petition A– schedule debts and liabilities of petitioner are greater than petition B-schedule properties.

30. In order to disbelieve the case of petitioner, third respondent seriously contended that before filing insolvency petition, petitioner executed sale deeds regarding his properties in the name of his close relatives to screen the properties. To butters his version, he heavily relied upon the evidence of PW1. In the cross-examination, PW1 admitted he along with his family members alienated his properties on 12.3.2021. For better appreciation of the case, relevant portion of evidence of PW1 is reproduced hereunder:

It is true that before filing of this I.P., I along with my family members alienated the properties.

It is true that I along with my family members has sold property on 12.3.3021 to an extent of 129 sq. yards situated in Door No.7-109 in Nandivelugu Village, for an amount of Rs.8,36,000/-.

- 31. It is crystallized from the above that the petitioner and his family members sold the property together before filing this insolvency petition. Except that, the third respondent did not elicit that the said property is the exclusive property of petitioner. If, really, the said properties are exclusive properties of petitioner, his family members would not be co-executants of sale deeds. So, based on the above evidence of PW1, no one can arrive at the conclusion that the said property is exclusive property of petitioner.
- 32. It is relevant to note that third respondent did not adduce either oral or documentary evidence to show that before filing insolvency petition, petitioner sold his exclusive properties. Further, third respondent did not offer any explanation why he did not place any material evidencing that petitioner had exclusive property or sold the same to others before filing of insolvency petition. In the absence of material, the court cannot come to a conclusion that petitioner alienated his exclusive property. Unless it is

established that petitioner sold his exclusive property, the question of screening of the same did not arise.

- 33. For instance, if it is construed that petitioner executed sale deed regarding his property before filing insolvency petition, now the question before the court is, whether it prohibits the petitioner from seeking to be adjudged as insolvent.
- As seen from the pleadings of third respondent, there is no date 34. of sale deed or alienation of properties. However, it is elicited in the cross examination of PW1 that he along with his family members sold the property on 12.3.2021. Whereas present insolvency petition was filed on 15.6.2021. It shows that 3 months after execution of sale deed, present insolvency petition was filed. As per Sec.9 of the Act, creditor I.P. shall be filed within three months from the date of act of insolvency. Except that provision, either Sec.6 or 10 of the Act do not disclose that debtor I.P. shall not be filed after alienation of the property. Section 13 of the Act enunciates the contents of insolvency petition. Wherein also it is not mandated to mention particulars of property alienated by the debtor. Further, it does not speak insolvency petition shall not be filed after alienating the property. Thus, either Sec.6, 10 or 13 of the Act does not prohibit the debtor from filing insolvency petition to be adjudged him as insolvent. Therefore, the contentions of third respondent are not tenable.
- 35. However, it reveals from the evidence of PWs 2 to 4 that with the sale consideration, petitioner discharged some of his debts. In their cross examination, third respondent did not dispute the same. Therefore, their evidence is unchallenged. Thus, it reveals from the evidence that petitioner discharged some of his debts with the sale consideration. Therefore, no malafides can be attributed to the petitioner. Therefore, viewed from any

angle, alienation of property would not debar the petitioner from filing this Insolvency petition.

- 36. It is important and significant aspect which needs to be mentioned here that 12th respondent is Bajaj Finance Company. Its nature and status are not disputed by the petitioner also: Now the question before the court is whether an insolvency petition is maintainable against companies or corporations, like 12th respondent.
- 37. Sec. 8 of the Act would answer the above question. It deals with the exemption of corporation etc., from insolvency proceedings. It is worthwhile to reproduce the provision hereunder:
 - "8. Exemption of corporation, etc. from insolvency proceedings:- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."
- 38. A plain reading of the above provision makes it manifest that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. In Indian Overseas Bank Vs. Popuri Veeraiah and another⁵, Hon'ble Composite High Court held at Para No.11 as follows:
 - 11. On a bare reading of the above Section, it is quite apparent that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the

5

²⁰⁰⁹⁽⁴⁾ ALT 365

mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions. of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.

- 39. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies/corporate is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, 12th respondent is a company. In view of the above provision and authority, the present insolvency petition is not maintainable against 12th respondent.
- 40. Though other contentions of 3rd respondent are not tenable, in view of the exemption of companies and corporations from insolvency proceedings as discussed above, the present insolvency petition is not maintainable against 12th respondent. In so far as other private individuals are concerned, it is perfectly maintainable.
- On thorough scrutinizing the evidence and contentions of both parties, it crystallizes that the debts and liabilities of petitioner are greater than his assets shown in B-schedule properties, even after excluding the debts of 12th respondent. Thereby, the petitioner complied with the mandatory requirements of Section 10 of the Act to adjudge him as insolvent. In view of the above-mentioned facts and circumstances and the aforesaid discussion, this court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.

Result

42. In the result, the petition is partly allowed by adjudging the petitioner as insolvent and giving six months time to discharge, while

dismissing the petition against 12th respondent. All his properties are vested with the Official Receiver to deal with the same according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Dictated to the Grade-I Stenographer, transcribed by her, corrected and pronounced by me in the open court on this 22nd day of August, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

P.W.1: Arisetty Gopi

P.W.2: Govindu Venkata Rao

P.W.3:Addanki Srinivasa Rao

P.W.4: Chennapragada Prudhvi Raju

For Respondents: None.

DOCUMENTS MARKED

For Petitioner:

-NIL-

For Respondents:

NIL.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

[Dis No.65.

// True copy//

I A.S.C.J., GUNTUR.

I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Tuesday, the 26th day of September, 2023

INSOLVENCY PETITION NO.23/2022

Between:

Velpuri Bhavani Devi, W/o Siva Subramanya Prasad, House wife, Hindu, aged about 59 years, R/o Door No.25-18-3A, Nallacheruvu, 0/8 Line, Guntur.

...PETITIONER.

AND

- 1. Kocharla Jayasri, W/o Souraiah, Hindu, aged about 73 years, R/o Door No.24-12-225/A, Nallacheruvu, 0/8 Line, Guntur.
- 2. Korivi Hari Babu, S/o not known to petitioner, Hindu, aged about 45 years, Driver in Railways, R/o 5th Line, Nehrunagar, Guntur.
- 3. Lakkoju China Satyanarayana, S/o not known to the petitioner, Hindu, aged about 32 years, R/o 5th Line, First cross Road, Nallacheruvu, Guntur.
- Lakkoju Prasyhanthi, W/o China Satyanarayana, House wife, Hindu, aged about 28 years, R/o 5th line, First cross road, Nallacheruvu, Guntur.
- 5. Kommuru Naga Mani, W/o Krishna Murthy, House wife, Hindu, aged about 48 years, R/o 5th line, First cros road, Nallacheruvu, Guntur.
- 6. Kotha Dhanalakshmi, W/o Babu Rao, House wife, Hindu, aged about 55 years, r/o Door No.24-12-159, 0/8 line, Nallacheruvu, Guntur.
- 7. Thota Vani W/o not known to the petitioner, House wife, Hindu, aged about55 years, R/o Door No.24-12-225/A, 0/8 line, Nallacheruvu, Guntur.
- 8. Kollipara Koteswari, W/o Saibabu, House wife, Hindu, aged about 50 years, R/o 0/8 line, Nallacheruvu, Guntur.
- 9. Gopisetty Tirumala Devi, W/o Chandra Sekhar, House wife, Hindu, aged about 42 years, R/o 5th Line, R-Agraharam, Guntur.
- 10. Koduru Lakshmi, W/o Suresh, House wife, Hindu, aged about 42 years, R/o 0/7 Line, Nallacheruvu, Guntur.
- 11. Kojuru Malathi Latha, W/o Srinivas Chakravarthi, Government teacher, Hindu, aged about 46 years, R/oGovernment High School, Vinukonda.
- 12. Meduri Lakshmi Thulasi, W/o Sivarama Krishna, House wife, Hindu, aged about 58 years, R/o 0/8 line, Nallacheruvu, Guntur.
- 13. Meduri Siva Rama Krishna, S/o Raghavacharyulu, Hindu, aged about 70 years, R/o 0/8 line, Nallacheruvu, Guntur.
- 14. Puli Veeraiah, S/o not known to petitioner, Cultivation, Hindu, aged about 50 years, R/o Nadimpalli village, Cherukupalli Mandal, Guntur District.

- 15. Puli Sampoorna Devi, W/o Veeraiah, House wife, Hindu, aged about 46 years, R/o Nadimpalli village, Cherukupalli Mandal, Guntur District.
- 16. Gutha Anjamma, W/o Kondaiah, House wife, Hindu, aged about 75 years, R/o C/o Sriramsetty jayalakshmi, 2nd line, Sugali Colony, Opp. To Nallacheruvu, Guntur.
- 17. Official Receiver, District Court Campus, Guntur.

...RESPONDENTS.

This petition coming on 6.9.2023 for final hearing before me in the presence of Sri T. Murali Dhar, Advocate for petitioner and R1 to R16 remained exparte, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition is filed under Section 10 of the Provincial Insolvency

 Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
- 2. The main case of the petitioner, in brief, is that,
 - originally, the petitioner is a housewife, and her husband is RMP Doctor. They were blessed with two children. Now they are about 27 and 24 years, respectively. About 20 years ago, petitioner's husband left her, and whereabouts of him is not known. As there is no other way, the petitioner used to work in a private shop to eking out her livelihood.
 - ii) Later, she joined as a commission agent at Agri Gold Company in 2007. She joined so many people as members in the said scheme. At that time, she used to get commissions from the Agri Gold Company, and her life has gone smoothly.
 - iii) While the matter stood thus, Agri Gold Company was closed and stopped payments to the depositors in or about 2011 or 2012. Immediately on closing the company, so many depositors pressurized the commission agents who joined the depositors in the company. Similarly, the petitioner is also pressurized by depositors to pay their

amounts deposited in the scheme run by Agri Gold Company. As there is no other way to avoid pressures from the depositors, the petitioner borrowed amounts from respondents 1, 2, 5 to 8 from time to time and executed promissory notes, agreeing to repay the same with interest at 36% p.a. and paying the amounts to the depositors. During that period, she started a chit business and used to get commissions on the chit business. The petitioner also established a small provision shop in the house. Thus, she earned money by way of commission and profits in the provision business as well. She is regular in paying the interest every month to the respondents 1, 2, 5 to 8 and also made part payments under the said promissory notes. But she is unable to discharge the entire principal amount. While the situation is going on like this, in the year 2017, chit subscribers who participated in the chits received amounts, failed to repay them. Due to this, she was forced to borrow amounts from respondents 3, 4, 9 to 16 under promissory notes to pay the amounts to the other chit members.

- she is earning money from the Kirana and hotel business and used to pay interest and some amount towards part payment to the respondents. The respondents 1, 2, 5 to 8 used to renew the promissory notes from time to time. Due to COVID-19, there has been no kirana business or hotel business since 2019. Due to this, her hands were tied, and she is unable to discharge the debts.
- v) She paid huge amounts in interest to the respondents. She tried her level best to develop her business and discharge the debt payable to the respondents. But she is unable to discharge the debts. At present, she has no capacity or means to discharge the debts. The amounts

payable by the chit members to the petitioner are nearly Rs. 10,60,000/- and they were shown in B-3 schedule property. Hence, she urged the court to adjudge her as insolvent.

- 3. On service of notices, respondents 1 to 8, 10 to 15, 17 did not appear before the court either personally or through their counsel. As such, they were set exparte. I.P. was dismissed against respondents 9 and 16.
- 4. Now the point for determination is:-

Whether the petitioner is entitled to be declared as an insolvent as prayed for?"

- 5. During course of enquiry, the petitioner herself examined as P.W.1 and Exs.P1 and P2 are marked on her behalf. On the other hand, respondents did not adduce either oral or documentary evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

- 8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:
 - Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."
- 9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:

- Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:
- (a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

- Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."
- 11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.
- 13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another² , the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

- 17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor.
- 18. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

and, thereby, she was unable to pay debts, she relied on her testimony. She examined herself as P.W.1. She reiterated the averments of the petition in her chief examination affidavit. Respondents failed to cross-examine her. Thus, her chief examination became unchallenged.

- 19. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But she furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.
- 20. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

SI.No	Name of the Creditor	Amount due	Nature of debt Rs.
1.	Kocherla Jayasri	14 pronotes	Rs.19,00,000-00
2.	Korivi Hari Babu	5 pronotes	Rs.11,00,000-00
3.	Lakkoju China Satyanarayana	1 pronote	Rs.1,00,000-00
4.	Lakkoju Prasanthi	1 pronote	Rs.2,00,000-00
5.	Kommuru Nagamani	5 pronotes	Rs.4,00,000-00
6.	Kotha Dhana Lakshmi	4 pronotes	Rs.5,00,000-00
7.	Thota Vani	5 pronotes	Rs.6,00,000-00
8.	Kollipara koteswari	4 pronotes	Rs.9,00,000-00
9.	Gopisetty Tirumala Devi	Hand Iona	Rs.4,00,000-00
10.	Koduru Lakshmi	1 pronote	Rs.4,00,000-00
11.	Pokuru Malathi Latha	1 pronote	Rs.4,00,000-00

12.	Meduri Lakshmi Thulasi	1 pronote	Rs.3,00,000-00
13.	Meduri Siva Rama Krishna	1 pronote	Rs.5,00,000-00
14.	Puli Veeraiah	5 pronotes	Rs.3,00,000-00
15.	Puli Sampoorna Devi	Hand loan	Rs.5,00,000-00
16.	Gutha Anjamma	1 pronote	Rs.1,00,000-00
	Total		Rs.85,00,000-00

- 21. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 85,00,000/-. Now the question is: whether his debts exceed his properties?
- 22. The petitioner showed his properties in petition 'B' schedule property. As seen from the petition B schedule immovable property, bank securities, outstanding, and cash on hand (B1 to B4) are shown as nil. She showed a list of amounts and persons due to her in the petition B-3 schedule. It is useful to reproduce hereunder:

'B-3' schedule

SI.No	Name of the Creditor	Amount due	Nature of debt Rs.
1.	Gunji Eeswaramma	Chit Due	Rs.1,00,000-00
2.	S. Vijaya lakshmi @ china	Chit Due	Rs.1,00,000-00
3.	G. Suseela	Chit Due	Rs.1,50,000-00
4.	Santhi	Chit Due	Rs.30,000-00
5.	P. Jani	Chit Due	Rs.3,00,000-00
6.	Nagamma	Chit Due	Rs.30,000-00
7.	M. Sambasiva Rao	Chit Due	Rs.50,000-00
8.	P. Padmaja	Chit Due	Rs.50,000-00
9.	G. Sankar	Chit Due	Rs.1,50,000-00
10.	Yallaiah	Chit Due	Rs.1,00,000-00
	Total		Rs.10,60,000-00

- 23. She showed wearing apparel in the B-5 Schedule worth Rs. 1,000/-. It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.
- 24. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.
- 25. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge. All her properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 26th day of September, 2023.

Sd/- Y. Gopala Krishna
I ADDL. SENIOR CIVIL JUDGE,
GUNTUR.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

P.W.1 :Velpuri Bhavani Devi

For Respondents: None.

DOCUMENTS MARKED

For Petitioner:

Ex.P1: Copy of Aadhar card of petitioner (Compared with original)

Ex.P2: Agent identify card issued by Agri Gold Company.

For Respondents:

-Nil-

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

[Dis No.68.

// True copy//

I A.S.C.J., Guntur.

I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Friday, the 25th day of August, 2023

INSOLVENCY PETITION NO.39/2016

Between:

Shaik Vijaya Babu, S/o Nagoor Saheb, aged about 28 years, Muslim, R/o Chamallamudi village, Vatticherukuru Mandal, Guntur District.

...PETITIONER.

AND

- Inaganti Babu @ Shaik Babu, S/o Nabi Saheb, aged about 49 years, Muslim, Native of Chamallamudi, presently R/o D.No.11-71, Sivalayam Veedhi, Kummkari Bazar, Ganapavaram Village, Nadendla Mandal, Guntur District.
- Inaganti Mohammad Khasim, S/o Nabi Saheb, aged about 38 years, Muslim, R/o Chamallamudi Village, Vatticherukuru Mandal, Guntur District.
- 3. Official Receiver, District Court Complex, Guntur.

...RESPONDENTS.

This petition coming on 1.8.2023 for final hearing before me in the presence of Sri Y.Srinivasa Rao, Advocate for petitioner and Sri Alla Govinda rao, Advocate for R1 and R2, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This insolvency petition is filed for following reliefs:
 - to adjudge the first respondent as an insolvent;
 - ii) to annul or to cancel the Registered Gift Deed dated 18.2.2016 bearing Doc.No. 497/2016 of SRO, Prathipadu executed by the first respondent in favour of the second respondent as null and void;
 - iii) to vest the petition schedule property with the official receiver for administration,
 - iv) for costs of the petition and
 - v) to pass such other reliefs as the Court deems fit and proper in the circumstances of the case.
- 2. The main case of the petitioner, in brief, is that,
 - i) first respondent borrowed Rs. 1,25,000/-, Rs. 1,25,000/- and
 - Rs. 1,00,000/- from the petitioner on 10.6.2015, 15.6.2015 and

- 22.6.2015, respectively, for his family expenses and executed promissory notes on respective dates, agreeing to repay the same with interest at 24% p.a.
- ii) Subsequently, in spite of repeated demands, the first respondent did not choose to repay the same by postponing the same on one pretext or another. Finally, on 3.2.2016 petitioner got issued legal notice calling upon him to repay the same within 10 days. On receipt of the same, the first respondent got issued reply notice on 11.2.2016 with false allegations admitting signatures on promissory notes, while denying the quantum of amounts. In fact, all three promissory notes were self scribed by the first respondent. Therefore, the question of signing and handing over empty promissory notes does not arise at all. The brother of first respondent by name Inaganti Mohammad Khasim (second respondent) is the only attestor to all three promissory notes. Therefore, the allegations in the reply notice are false and invented to defeat the rights of petitioner.
- iii) In the recent past, the brother of first respondent Inaganti Mohammad Khasim (second respondent) is claiming that his brother (first respondent) gifted the house site in Chammallamudi village, and he is going to construct a house on that site. On enquiry, petitioner came to know that after receipt of legal notice and issuing of reply, first respondent executed a collusive, sham, fraudulent, nominal, invalid, and void gift deed dated 18.2.2016 in favour of his half blood younger brother Inaganti Mohammad Khasim (second respondent). It is very surprising and not understandable that, though the first respondent has a wife, children, father and full blood sister, why he gifted the immovable property to his half-blood brother (second respondent). The

said gift deed is created and brought into existence with a malafide intention to defraud the petitioner and to screen away from the creditors. Therefore, the gift deed is not binding on the petitioner.

- On 23.4.2016 by obtaining a certified copy of the gift deed from Mee Seva, the petitioner confirmed himself about the alienation of the only immovable property of the first respondent in favour of his brother (second respondent). The first respondent created the impugned collusive gift deed to avoid the debts of the petitioner. He filed a suit in O.S. No. 297/2016 for realization of money from the first respondent and also filed an interlocutory application not to alienate the gift schedule property.
- v) Except the petition schedule property, the first respondent has no other property. With intend to defeat genuine creditors, including petitioner, to avoid their payments, the first respondent illegally, fraudulently, and nominally created and brought into existence the impugned gift deed in favour of second respondent. Hence, the present petition is filed to adjudge the first respondent as insolvent and declare the gift deed dated 18.2.2016 bearing Doc. No. 497/2016 null and void.
- On the other hand, respondents 1 and 2 resisted the claim of the netitioner by filing a counter. The first respondent filed a counter. The econd respondent filed a memo adopting the counter of first respondent. They denied the averments of petition specifically. The main case of espondents 1 and 2, in brief, is that:
 - i) when the first respondent was in need of money, he approached the petitioner for borrowing Rs. 1,00,000/- for business purposes. At that time, on the demand of the petitioner and in compelling circumstances, he handed over the petitioner three promissory notes

signed in English and borrowed Rs. 1,00,000/-. Due to financial crises, the first respondent is unable to discharge the said debt, though the petitioner frequently demands that the debt be discharged. In that regard, some disputes arose between them. On that, the petitioner bore a grudge against him and filed a false suit in O.S. No. 297/2016 for wrongful gain. After receiving summons and copies of documents in O.S. No. 297/2016 along with promissory notes, he noticed that those promissory notes are not the promissory notes signed by him. In fact, he never signed in Telugu and scribed any promissory notes in his own hand writing. At the time of issuing legal notice, petitioner failed to provide the photostat copies of the alleged promissory notes.

- ii) Now, first respondent is ready to pay Rs. 1,00,000/- with interest. Except for the said debt of Rs. 1,00,000/-, the first respondent never borrowed any amount from any person. Petitioner filed the suit in O.S. No. 297/2016 and present I.P. against respondents only to coerce and harass them and to defame them in the village.
- ii) The transfer of property through a gift deed in favour of the second respondent is a genuine and valid one, and it was not created for the purpose of avoiding debts as contended by the petitioner. The said transfer was made only in the family settlement of properties between family members of first respondent. Therefore, said transfer does not come under the purview of the Act. The first respondent has some other properties apart from the schedule property. In fact, petition schedule property is worth about Rs. 25,00,000/-, whereas the first respondent is in due Rs. 1,00,000/- only to the petitioner. As such, this petition is not maintainable.

- the petitioner and first respondent. Further, the second respondent is in no way concerned with the petitioner at any point of time. However, the alleged promissory notes are devoid of consideration, and the first respondent contested the suit in O.S. No. 297/2016.
- iv) The signatures of first respondent on the alleged promissory notes are forged and created for the purpose of filing of case in O.S. No. 297/2016 and the present petition. Hence, he urged the court to dismiss the petition.

4. Now the points for determination are:-

- 1. Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?
- 2. Whether Gift deed dated 18.2.2016 should be annulled as prayed for?
- 5. At the event of enquiry, the petitioner examined P.Ws. 1 and 2, while relying on Exs.P1 to P10. On the other hand, respondents examined RWs 1 to 3 and exhibited R.1 to R.9.
- 6. Heard arguments on both sides.
- 7. Perused the record.

POINTNO.2:-

- 2. Whether Gift deed dated 18.2.2016 should be annulled as prayed for?
- 8. It is the case of the petitioner that, to defeat and delay his claim, the first respondent executed a sham and nominal Gift Deed dt: 18.2.2016 and therefore, it is liable to be annulled. On the other hand, respondents 1 and 2 refuted the same, contending that there are no malafides in executing a gift deed and, hence, the gift deed shall not be annulled.

- 9. In view of the rival contentions of both parties, this Court has to examine whether the Insolvency Court can annul a gift transaction simultaneously with the adjudication of the insolvent. To decide this question, it is desirable to read the provisions of the Provincial Insolvency Act, more particularly Sections 53, 54, and 54-A of the Act.
- 10. Section 53 of the Act envisages that any voluntary transfer made by the debtor if the transferor is adjudged as insolvent can be avoided. Section 54 of the Act enumerates that every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as he become due from his own money in favour of any creditor and giving preference over the other creditors, and if such person is adjudged insolvent on a petition presented, shall be deemed to be fraudulent and void against the receiver and shall be annulled by a Court saving transaction entered into in good faith and for valuable consideration.
- 11. A fraudulent transfer under Section 53 of the Act and a transaction to give fraudulent preference under Section 54 of the Act are void against the receiver, and they shall be annulled on the petition filed within a specific time. Section 54-A of the Act specifies the procedure for annulment of any transfer under Sections 53 or 54 of the Act. According to it, for annulment of any transfer under Sections 53 or 54 of the Act, a petition may be presented by a receiver, or with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such a petition.
- 12. In view of the language used in Sections 53 and 54 of the Act, more particularly, the words "if the transferor is adjudged insolvent" under Section 53 of the Act and "if the person is adjudged insolvent" under Section

54 of the Act indicate that, for annulling a transaction of transfer, the debtor must be adjudged insolvent. So, to annul a transaction of transfer, a precondition is adjudging the debtor as insolvent. It is more clear from the following jurimetrical jurisprudence.

- 13. In Tadikamalla Venkata Ramana Kishore and another Vs. P.Santhakumari and others¹, the Hon'ble composite High Court held at para no.25 as follows:
 - 25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.
- 14. In Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another², the Hon'ble Composite High Court held at para no.31 as follows,
 - [31] This Court held that the transaction covered by any registered document amounts to an act of insolvency under Section 6(1)(b) of the Act. It cannot be annulled except on an application filed under

^{1 2015 (2)} LS 361

^{2 2015} LawSuit(Hyd) 1121

Sections 53 and 54 of the Act after compliance of procedure prescribed under Sections 45 to 50 and 54-A of the Act.

- 15. A conspectus of the above authorities is that, unless the debtor is adjudged as insolvent, the next stage of proof of debt as contemplated under sections 45 to 50 and 54-A of the Act does not arise. After proof of debt, on an application filed under Sections 53 and 54 of the Act, a separate enquire will be conducted on the annulment of a register document by complying with procedure.
- 16. In the present case, this petition is filed to adjudge the first respondent as insolvent and annul the registered gift deed dt: 18.2.2016/Ex.P1 executed in favour of the second respondent. Thus, he sought two reliefs simultaneously, and the relief claimed by the petitioner/creditor with regard to annulment of the gift transaction is against the spirit of the language used under Sections 53 and 54-A of the Act. In view of the above authorities, at this stage, the registered gift deed dt: 18.2.2016 cannot be annulled. There is a separate procedure laid down under Sections 53, 54, and 54-A of the Act. Accordingly, this point is answered.

POINT NO.1:

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

17. It is the case of the petitioner that the first respondent borrowed Rs. 1,25,000/-, Rs. 1,25,000/-, and Rs. 1,00,000/- from the petitioner on 10.6.2015, 15.6.2015 and 22.6.2015, respectively, for his family expenses and executed promissory notes on respective dates, agreeing to repay the same with interest at 24% P.A. Subsequently, instead of discharging debts, first respondent executed a registered gift deed in favour of the second respondent conveying the petition schedule property with intend to defraud

and delay his claim to recover promissory notes debt, and thereby, the first respondent committed an act of insolvency, and he is liable to be adjudged as insolvent.

18. On the other hand, the respondents 1 and 2 recusant the case of petitioner, contending that the gift deed executed by the first respondent is a genuine transaction; and that the alleged promissory notes were forged documents, and therefore, no malafides can be attributed to the gift deed.

Whether creditor IP is maintainable without obtaining a money decree?

- 19. In addition to the above, learned counsel for respondents questioned the maintainability of this petition by arguing that, as the debt of petitioner is not qualified by decree, by the date of presentation of this petition, and therefore, this IP is not maintainable under law. As respondents questioned the maintainability of the case, it is apropos to discuss the same firstly, before going into examining the case of the petitioner in the light of Sections 6 and 9 of the Act.
- 20. In view of the contentions of respondents, Section 9 of the Act has to be examined carefully. It is discernible to reproduce Section 9 of the Act hereunder:
 - **9. Conditions on which creditor may petition.**—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—
 - (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
 - (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
 - (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the

insolvency petition may be presented on the day on which the Court re-opens.

- (2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.
- 21. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is, such debt is a liquidated sum payable immediately or at a certain future time; and third is, petitioner shall file the petition before the expiration of three months from the date of the act of insolvency. Except for these three conditions, it does not mandate the filing of a suit or the obtaining of a decree for filing an insolvency petition. In the normal sense, creditor includes decree holder, and debtor includes judgment debtor.
- As seen from the above provision, obtaining a decree against the debtor is not a condition precedent to filing an insolvency petition. When the provision does not require any money decree for instituting a petition under Section 9 of the Act, the non-obtaining of a money decree does not prevent the petitioner from filing an insolvency petition.
- 23. In Dara Mohan Muralidhar's case stated supra, the Hon'ble High Court held at para no. 22 as follows:-
 - [22] None of the conditions under Section 9 speaks about filing of a suit and obtaining a decree for filing an insolvency petition and at the same time, Section 2 Clause (1)(a) defines the 'creditor' as "it includes a decree-holder, 'debt' includes a judgment-debt, and 'debtor' includes a judgment- debtor". In view of the definition of the creditor, a person, who lent amount, is also a creditor as defined under Section 2(1)(a) of the Act. The word 'creditor' is much wider than a mere decree-holder and when I turn to Section

- 9, it is clear and it is not disputed that for the purposes of Section 9(a) to (h) the expression "Creditor" used in that section is used in its wider connotation and would include not only a decree-holder but also an assignee of a decree-holder. Therefore, the person, who advanced money to the first respondent, the petitioners are entitled to initiate proceedings under Section 9 of the Act since obtaining decree against the debtor is not a precondition to adjudge the first respondent as insolvent. Therefore, dismissal of the application on the ground that the petitioners are not the judgment-debtors and failed to obtain any decree by filing a suit is not a ground to dismiss the Insolvency Petition but the first appellate Court on erroneous appreciation of law dismissed the Insolvency Petition, setting aside the order passed by the Additional Senior Civil Judge at Eluru.
- 24. The above authority crystallizes that obtaining a decree is not a pre-condition to filing a creditor IP or adjudging the debtor as insolvent. The above authority is squarely applicable to the present case. In view of the above authority, the submissions of learned counsel for respondents are not sustainable.

<u>Compliance with the first and second requirements under Section 9</u> <u>of the Act:</u>

- 25. Turning to the compliance of first and second requirements under Section 9 of the Act, it is the case of petitioner that the first respondent borrowed Rs. 1,25,000/-, Rs. 1,25,000/-, and Rs. 1,00,000/- from the petitioner, on 10.6.2015, 15.6.2015 and 22.6.2015, respectively, for his family expenses and executed promissory notes on respective dates.
- 26. On the other hand, respondents strenuously refuted the case of petitioner by contending that promissory notes are forged and fabricated documents.

- 27. In view of the rival contentions of both parties and to comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioner to prove that the first respondent borrowed amounts and was indebted to the petitioner. In order to prove the case, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. Respondents cross-examined him. In the cross-examination, PW1 testified that, he knows respondents 1 and 2 since his childhood; and that first respondent has to pay Rs. 3,50,000/-. Further, he pleaded ignorance, saying that he does not know other creditors of the first respondent.
- 28. Except the above, they did not pose any questions about the promissory notes transaction. In addition to the above, respondents put their defence by way of suggestions. Of course, PW1 denied the same.
- 29. Besides the above evidence, the petitioner examined Shaik Srinu as PW2. His evidence is constrained to the sale of the entire property of the first respondent. He stated in his chief examination affidavit that the first respondent has no properties in Chamallamudi village. Except for that, his evidence does not speak about debt transition. Therefore, his evidence is not relevant to determining the first and second ingredients of Sec. 9 of the Act stated above. His evidence would be discussed at an appropriate time.
- Apart from the oral evidence, the petitioner relied upon Exs.P1 to P10. Ex.P1 is the certified copy of gift deed dated 18.2.2016, Ex.P2 is the original receipt of Mee seva dated 23.4.2016, Ex.P3 is the certified copy of pronote dated 10.6.2015, Ex.P4 is the certified copy of the pronote dated 15.6.20016, Ex.P5 is the certified copy of the pronote dated 22.6.2015, Ex.P6 is the office copy of the legal notice dated 6.2.2015, Ex.P7 is the postal receipt dated 4.2.2016, and Ex.P8 is the acknowledgment dated

- 6.2.2016. Ex.P9 is the reply notice of R1 dated 11.2.2015 and Ex.P10 is the certified copy of the sale deed dated 4.12.2015 doc. No.6033/2015.
- Among the documentary evidence, Exs.P3 to P5 are most relevant to answering the first and second requirements under Section 9 of the Act. They are certified copies of promissory notes dated 10.6.2015, 15.6.2015 and 22.6.2015. According to the petitioner, promissory notes were self scribed by the first respondent, and his brother (second respondent) is sole attestor. Admittedly, the second respondent is the donee under the gift deed(Ex.P1). Therefore, there is no possibility for the petitioner to examine the sole attestor (second respondent) to prove a execution of promissory notes (Exs.P3 toP5). Thus, there is a justifiable reason for not examining the attestor to the promissory notes.
- 32. Admittedly, petitioner filed suit in O.S. No. 297/2016 for recovery of money on foot of promissory notes/originals of Exs.P3 to P5. In the cross-examination of RW1 (first respondent), he admitted that the suit filed by the petitioner in O.S. No. 297/2016 was decreed, and the certified copy of decree copy is marked as Ex.R1.
- 33. A certified copy of the decree in O.S. 297/2016 on the file of this court reveals that the suit filed by petitioner herein against the first respondent herein was decreed in favour of petitioner herein on contest. As per the decree, "first respondent herein is liable to pay Rs. 4,22,049/- with interest at 12% p.a. from the date of filing of the suit, till the date of decree and thereafter subsequent interest at 6% p.a. till the realization on principal amount of Rs. 3,50,000/-."
- 34. Though petitioner failed to adduce other evidence except his self-testimony, he proved debt transactions under promissory notes/Ex.P3 to P5 through a contest decree in O.S. No. 297/2016/Ex.R1.

FINDING ON PROOF DEBT:

35. In view of the above facts and circumstances and the decree in O.S.297/2016(Ex.R1), it is held that the petitioner established the debt of first respondent. Thereby, the petitioner complied with the first and second requirements of Section 9 of the Act stated above.

ACT OF INSOLVENCY:

- 36. As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of Act of insolvency. No doubt, this petition was filed on 28.4.2016, within three months from the date of execution of gift deed/original of Ex.P1. Now the question before the court is, whether the execution of gift deed amounts to an act of insolvency or not.
- Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant.
- 38. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) and (b) of the Act. For a better appreciation of the case, relevant provision is reproduce hereunder:
 - **6. Acts of insolvency.**—(1) A debtor commits an act of insolvency in each of the following cases, namely:—
 - (a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
 - (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

- (c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- 39. As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.
- 40. As seen from the Gift deed/Ex.P1, property was not transferred to creditors of first respondent as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.
- As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the first respondent gifted the schedule property in favour of second respondent under Gift deed dated dt.18.2.2016 with an intention to defeat and delay his claim, and thereby, the first respondent committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, this provision is relevant to the present case.

Maintainability of insolvency petition on the ground of a single creditor:

42. In the course of arguments, learned counsel for respondents questioned the maintainability of this petition, by drawing the attention of this Court to Section 6 of the Act, contending that where there is only single creditor, insolvency petition is not maintainable.

- 43. Since the learned counsel questioned the application of Section 6 of the Act, it is apropos to discuss the same here.
- Learned counsel for the respondents 1 and 2 invited the attention of this court on the evidence of PW1 and submitted that there are no other creditors to the first respondent, but to invoke Sec. 6(i)(b) of the Act, there must be a body of creditors, and where there is single creditor, creditor insolvency petition is not maintainable, and therefore, this insolvency petition is liable to be dismissed.
- In view of the arguments of learned counsel, the evidence of PW1, and Sec. 6(i)(b) of the Act has to be examined carefully. In the cross-examination, PW1 pleaded ignorance about other creditors of the first respondent. For a better understanding, the relevant portion of evidence of PW1 is stated hereunder:

"I do not know other creditors of 1st respondent."

- 46. Except for the above, PW1 never deposed that the first respondent has no other creditors. Pleading ignorance about the other creditors of the first respondent does not mean that the first respondent has no other creditors. In fact, in the pleadings itself, the petitioner categorically stated that the "first respondent executed gift deed with intend to screen away property from the creditors." Whatever the plea taken in the petition, mere ignorance of the particulars of other creditors of first respondent does not mean that the first respondent has no other creditors. Hence, the contentions of learned counsel are not tenable.
- 47. For argument's sake, it is construed that the first respondent has no other creditors except the petitioner herein; now the question before the court is whether an insolvency petition is maintainable where there is only one creditor or not. Relying on Sec. 6(i)(b) of the Act, learned counsel

heavily argued that a single creditor cannot file an insolvency petition. It is fruitful to reproduce Sec. 6(i)(b) of the Act here under:

- Section 6 -(1) A debtor commits an act of insolvency in each of the following cases, namely:—
- (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his **creditors**;
- 48. The learned counsel emphasized the above word "Creditors". Admittedly, the petitioner, i.e., one creditor, alone filed the present insolvency petition. Moreover, there is no record to show the first respondent is indebted to how many creditors.
- Coming to precedents, there are conflicting of judgments on this topic. Gutta Niramala Vs. Gutta Nageswara Rao and others³, the Hon'ble High Court held that unless it is proved that alienation is, to defeat the genuine claim of general body of creditors, debtor cannot be adjudged as an insolvent. In the said judgment, the Hon'ble composite High Court relies its own precedents i.e., Pydimarri Venkateswarlu Vs. Pydimarri Jalamma reported in AIR 1969 A.P. 318 and Sanjeevi Reddy Vs. Ellappa Reddy reported in AIR 1967 A.P. 243.
- But, there is Division Bench judgment of our A.P. High Court in between G.Ramachandar Vs. Collector, Excise, Hyderabad and another⁴, wherein, it is held that Section 6 or 7 also entitles an individual to launch proceedings under the Act. The said Division Bench judgment is not referred in Gutta Nirmala's case stated supra. However, the said division bench judgment is with regard to debtor IP.

^{3 2010} LawSuit(AP) 988

⁴ AIR 1977 AP 346

- In K.D. Nagappa Vs. Sannakka, reported in AIR 1983 AP 13, the wife filed M.C. 11/1966 against her husband and obtained a maintenance award. Later, her husband alienated his lands and two houses to others. On that, the wife filed a creditor I.P. adjudge her husband as insolvent. The insolvency court allowed the petition. The same was confirmed by the appellate court. Thereafter, the husband filed a revision before the Hon'ble High Court.
- 52. In the said citation, the Hon'ble High Court had occasion to examine whether a single creditor can institute an insolvency petition. After examining Section 9 of the Act and several judgments, the Hon'ble High Court held that a single creditor is certainly entitled to maintain I.P. Finally, the Hon'ble High Court dismissed the revision petition.
- In Tadikamalla Venkata Ramana Kishore's case stated supra, the Hon'ble Composite High Court held that a single creditor can maintain a petition under Section 9 of the Act, though the transfer of property is to defeat the claim of the single creditor. In view of the Division Bench judgment stated supra and Tadikamalla Venkata Ramana Kishore's case stated supra, the present petition is maintainable, even though it was filed by a single creditor and there is only one single creditor. Hence, the contentions of learned counsel for respondents are not sustainable.
- Reverting to Sec. 6(i)(b) of the Act, it is the case of petitioner that the first respondent alienated schedule property to the second respondent with intend to defeat and delay the claim, and thereby, the first respondent committed an act of insolvency.
- 55. On the other hand, learned counsel for respondents denied the same, contending that mere transfer of property does not amount to act of

insolvency. To fortify his contentions, he relied upon Pirthi Vs. Budh Singh⁵. Further, learned counsel for respondents would argue that the first respondent has some other valuable properties, and therefore, the alienation of one of the properties does not amount to an act of insolvency.

56. Indisputably, a mere transfer of property does not amount to an act of insolvency unless such an alienation is made with the intent to defeat or delay his creditors.

Whether the first respondent owns other property

- 57. To disallow the claim of the petitioner, learned counsel for respondents drawn the attention of this court on the evidence of PW1 and submitted that the petitioner admitted that the first respondent has vast valuable properties and therefore, the alienation of one piece of property does not amount to an act of insolvency.
- 58. Learned counsel for respondents rightly contended that when a person has sufficient other properties, the sale or alienation of one of the properties alone does not amount to an act of defeating the creditors claim⁶. In view of the arguments of learned counsel, the evidence of PW1 has to be examined carefully.

Admission in the cross-examination of PW1:

59. In the cross-examination, PW1 testified that, in his earlier deposition in a suit, he admitted that the first respondent has property worth about one crore rupees, and in their village, the agricultural land of the respondent is worth about Rs. 1,25,000/- per cent, and he got Ac. 0.03

⁵ AIR 1982 All 179

⁶ M.Sriramulu Vs. P.Singaiah ; 1967 (2) AWR 329 and Dandamudi Chakradhararao and another Vs. Pidikiti Koteswararao and another : 1996 (3) ALT 34

cents of land. It is beneficial to reproduce the relevant partition of evidence of PW1 as follows:

"The agricultural land of the respondent is our village worth about Rs.1,25,000/- per cent and he got Ac.0.03 cents of land."

"It is true R1 has properties as deposed in O.S.297/2016 on the file of I ASCJC, Guntur i.e., Ac.0.60 cents, Ac.0.30 cents and Ac.0.03 cents and they worth about Rs.1,00,00,000/-"

- 60. Relying on the above evidence, learned counsel strenuously contended that the first respondent has some other valuable properties. Undoubtedly, the above-emphasized admission of PW1 relates to his earlier deposition in O.S. 297/2016. Except confronting earlier deposition, respondents did not elicit from PW1 about particulars of those properties. Therefore, simply relying on the above stray admission of PW1, it cannot be concluded that the first respondent has other valuable properties.
- establish that except for the petition schedule property, the first respondent has no other properties. PW2 testified that the first respondent alienated his entire property. Further, he specifically testified that the first respondent has no properties in Chamallamudi village. Thus, he supported the case of petitioner. But, based on the oral evidence of PW2, the Court cannot arrive at the conclusion that the first respondent has no other properties.

<u>Documentary evidence for the petitioner:</u>

62. Besides oral evidence, the petitioner relied on Exs.P1 and P10. Among them, Exs. P1 and P10 relate to the property of first respondent. Ex.P1 is a gift deed dated 18.2.2016. It reveals that the first respondent

gifted petition schedule property to the second respondent. The present petition revolves around this gift deed.

- 63. Ex.P10 is a Sale deed dated 14.12.2015. It reveals that the first respondent and his father together sold Ac. 0.81 cents and Ac. 0.75 cents in Chamallamudi village. Of course, RW1(first respondent) admitted in the cross-examination that he has no properties in Chamallamudi village.
- 64. In addition to the above, learned counsel for petitioner heavily relied on the evidence of RW1 to establish that the first respondent has no other properties.

Evidence of Respondents:

65. First respondent examined himself as RW1. He reiterated the averments of the counter in his chief examination affidavit. In view of the submissions of learned counsel, the evidence of RW1 has to be examined carefully. In the cross-examination, RW1 admitted that alienation of property under sale deed/Ex.P10, he did not purchase any other property; and that he has no other properties in Chamallamudi village after the alienation of property under Ex.P1. It is fruitful reproduce the relevant portion of evidence of RW1 hereunder:

I have not purchased any other property after selling my property under Ex.P10.

It is true the property was transferred under Ex.P1 as gift to my brother/R2.

I have no other property at Chamallamudi village after alienation of properties under Exs.P1 and P2.

I have not filed any document to show about my other properties.

66. Thus, Rw1 admitted that he has no other properties in Chamallamudi village. At the same time, he did not furnish particulars of his

other properties as well. Thus, the evidence of RW1 supports the case of petitioner.

Evidence of RW2:

- 67. Regardless of the above, since respondents 1 and 2 have taken the plea that the first respondent has some other properties, the burden is on them but not on the petitioner.
- In addition to the evidence of RW1, the second respondent examined himself as RW2. He also reiterated the averments of the counter in his chief examination affidavit. In the cross-examination, he testified about properties acquired by him under sale deeds and gift deeds. For a better appreciation of the case, relevant portion of evidence of RW2 is reproduced hereunder,

"I got 147.5 sq.yards of house sites at EtukuruVillage."

"It is true my father gifted some properties at Chamallamudi village and Turlapadu village. Ex.R5 is certified copy of gift deed dated 11.2.2018."

"I purchased one property from him in Turlapadu village Ex.R6 is certified copy of sale deed dated 22.1.2016."

"It is true I sold the petition schedule property to one Muvvala Rama Sandesh on 17.8.2016."

"It is true after cancellation deed again get petition schedule property under Ex.R8. Ex.R8 is cancellation deed dated 20.4.2018."

I purchased a house property on 29.7.2019 from ;said MuraliKrishna. Ex.R9 is certified copy of sale deed date 29.7.2019. I purchased it for Rs.9,00,000/-."

- 69. Besides the above oral evidence, respondents relied on a certified copy of gift deed dated 11.2.2018/Ex.R5, certified copy of sale deed dated 22.1.2016/Ex.R6, Certified copy of registered sale deed dated 17.8.2016/Ex.R7, a cancellation of sale deed dated 20.4.2018/Ex.R8 and a certified copy of sale deed dated 29.7.2019/Ex.R9. They are in the name of second respondent.
- 70. To determine the act of insolvency of first respondent, the properties of transferor, like the second respondent, are insignificant. Therefore, the above documents are irrelevant to the present case.

Certified copy of registered sale deed dated 25.4.2014/Ex.R3:

- 71. Besides the above oral evidence, respondents strongly relied on a certified copy of registered sale deed dated 25.4.2014/Ex.R3 to prove another property of the first respondent. It was marked in the evidence of RW2.
- 72. Certified copy of registered sale deed dated 25.4.2014/Ex.R3 reveals that the first respondent purchased Flat No. G-2, 2nd Floor, in Sri Sai Villa apartment, Ankireddypalem, Nallapadu, Guntur District, from Gade Phani Kumari for Rs. 11,64,000/-. It is not a schedule property herein. According to respondents, the said property is still in existence in the name of first respondent.

Evidence of RW3:

73. To strengthen the case, respondents examined Bachanaboyana Anjaneyulu as RW3. He supported the case of respondents testifying that the first respondent has one flat bearing No. G-2, 2nd Floor, Sri Sai Villa Apartments, Chuttugunta Centre, Guntur, which is worth Rs. 35,00,000/-.

- 74. Thus, Sale deed/Ex.R3 and evidence of RW3 establish that the first respondent has Flat No. G-2 in the Apartment.
- 75. To prove the nonexistence of said property in the name of the first respondent, learned counsel strongly relied on the evidence of RW2 and submitted that admission of RW2 cuts the case of respondents. In view of the arguments of learned counsel, the evidence of Rw2 assumes much importance.
- As seen from his evidence, he categorically admitted in the cross-examination that the said property was taken by the Bank authorities under SARFAESI proceedings. It is beneficial to reproduce the relevant portion of evidence of RW2 hereunder:

It is true State Bank taken the possession of the property for recovery of the debt amount i.e., Ex.R3 property and his property.

- 77. It is crystallized from the above evidence of RW2 that the property covered under Ex.R3 is vested with the Bank, and it is no longer the property of the first respondent. Therefore, it cannot be held that the first respondent has said property and that it is free from encumbrances.
- 78. Except for the above, respondents did not produce any other material to show that the first respondent has other properties or property covered under Ex.R3 is free from encumbrance.
- 79. In view of the above facts and circumstances, <u>it is held that</u> respondents failed to prove that the first respondent has other properties.

 Therefore, the contentions of learned counsel are not sustainable.
- 80. <u>Turning to the third ingredient under Section 9 of the Act</u>, it is already stated above that the petitioner established the debt of the first

respondent. It is not the case of respondents 1 and 2 that, after the gift deed/Ex.P1, the first respondent discharged the whole or part of the debt of petitioner. Thus, the debt of the first respondent due to the petitioner remains in existence even after the execution of gift deed/Ex.P1 also. Further, respondents did not place any material to show that the first respondent has other substantial properties free from encumbrances and that they are sufficient to discharge the debt. Instead of repaying the debt, the first respondent alienated his property under a gift deed, denying promissory notes, which were qualified by the decree.

81. All the above facts go to show the conduct of the first respondent that he alienated the property to defeat and defraud his creditors, including the petitioner.

Finding on act of insolvency:

82. All the above facts and circumstances establish that the act of first respondent in executing register gift deed/Ex.P1, by ignoring and denying the debt, which was qualified by decrees, constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

Finding on Point No: 1

83. In view of the facts and circumstances and the aforesaid discussion, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is settled.

RESULT:

In the result, the petition is partly allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 25th day of August, 2023.

Y. GOPALA KRISHNA.

1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

P.W.1: Shaik Vijaya Babu

P.W.2: Shaik Srinu

For Respondents:

R.W.1: Inaganti Babu @ Shaik babu

R.W.2: Inaganti Mohammad Khasim

R.W.3: Shaik Vijaya Babu

DOCUMENTS MARKED

For Petitioner:

Ex.P1: Certified copy of gift deed dated 18.2.2016

Ex.P2: Original receipt of Mee seva dated 23.4.2016

Ex.P3: Certified copy of pronote dated 10.6.2015

Ex.P4: Certified copy of pronote dated 15.6.20016.

Ex.P5: Certified copy of pronote dated 22.6.2015

Ex.P6: Office copy of legal notice dated 6.2.2015

Ex.P7: Postal receipt dated 4.2.2016

Ex.P8: Acknowledgment dated 6.2.2016

Ex.P9: Notice of R1 dated 11.2.2015

Ex.P10: Certified copy of sale deed dated 4.12.2015 doc. No.6033/2015.

For Respondents:

Ex.R1: Copy of decree

Ex.R2: R.W.1 evidence

Ex.R3: Certified copy of registered sale deed Doc.No.4576/14, dt.25.4.2014.

Ex.R4: Valuation certificate of said property issued by SRO, Nallapadu.

Ex.R5: Certified copy of gift deed dated 11.2.2018.

Ex.R6: Certified copy of sale deed dated 22.1.2016.

Ex.R7: Certified copy of registered sale deed dated 17.8.2016

Ex.R8: Cancellation deed dated 20.4.2018

Ex.R9: Certified copy of sale deed dated 29.7.2019.

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge,

Guntur.

[Dis No.66.

// True copy//

I A.S.C.J., GUNTUR.

ADDITIONAL SENIOR CIVIL JUDGE'S COURT TENALI

Tuesday, this the 31st day of October, 2023

Insolvency Petition No. 18 of 2023

Between

Sami Srinivas S/o.Sami Krishna, hindu, Business, aged about 53 years, Markendeya Veedhi, Salipeta, Tenali town, Guntur District.

...Petitioner

And

- 1. Sami Subbarao, S/o.not known, R/o.D.No.2-39-3, Sakhamuri Vaari Street, Burripalem Road, Tenali 522 201.
- 2. Ambati Bhuvaneswara Rao, S/o.not known, R/o.D.No.8-18, Vijay Cool Drink shop, Challapalli, Krishna District (Near Sampatalamma Temple).
- 3. Gubba Chandrasekhar, s/o.not known, R/o.D.No.16-31-22, Wahab Road, Salipet, Tenali 522 201.
- 4. Gangisetty Sirish, r/o.DnO.16-1-39, Chamundeswari Cloth Centre, Main Road, Tenali 522 201.
- 5. Chekka Surya Brahmam, S/o.late Chekka Bhaskar, R/o.D.No.22-11-42, Devi Dresses, Bose Road, Tenali 522 201.
- 6. Satuluri Satyanarayana, S/o.Not known, R/o.D.No.16-18-71, Salt Bazar, Tenali 522 201.
- 7. Maddi Adinarayana, S/o. Not known, R/o.Shop.Nos.73,74,103, 104, Sri Vasavi Wholesale Choth Merchants Society, Mangalagiri Road, Guntur 522 001.
- 8. Sri Sai Bhagavan Textiles Rep.by Prop. Subramanyam, S/o.Not known, R/o.D.No.16-24-32, Murthy Kondaiah Street, Sharoff Baazar, Tenali 522 201.
- 9. K.Gopal s/o.not known, R/o.D.No.16-3-143, Om Sai Sony Maruthi Handlooms, Shop No.21, 22, Ground Floor, Urvasi Complex, Sharoff Bazar, Tenali 522 201.
- 10. Jakka Rambabu S/o.not known, R/o.16-3-38, Sri Lakhsmi Ganesh Handlooms, S.N.Complex, Sharoff Bazar, Tenali 522 201.
- 11. P.Ramachandra Rao, S/o.Not known, R/o.D.No.16-3-37, Sri Vijaya Lakhsmi Cloth Centre, S.N.Complex, Sharoff Bazar, Tenali 522 201.
- 12. Ch. Venkat Rao, S/o.Not known, R/o.D.No.16-3-23, Mahesh Handloom Sarees, Sharoff Bazar, Tenali 522 201.
- 13. P.Mohan, S/o.Not known, R/o.D.No.16-3-77, Vaishnavi Textiles, Sharoff Bazar, Tenali 522 201.

- 14. K.Uma Shankar S/o. Not known, R/o.D.No.16-3-45, Durga Sarees Centre, Sharoff Bazar, Tenali 522 201.
- 15. S.Satish, S/o.not known, R/o.D.No.6-4-24, Madhura Meenakshi Medicals, Anjaneya Panthuluri street, Tenali 522 201.
- 16. P.D.V.Nagaraju S/o.not known, r/o.D.No.18-4-79, Markendeya street, Salipeta, Tenali 522 201.

...Respondents

This Insolvency Petition is coming on 30.10.2023 before me for hearing in the presence of Sri K.Kumara Swamy, Advocate for Petitioner and Respondents 1 to 16 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

- 1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner is as an insolvent; to appoint the official receiver as interim receiver of the property of the petitioner and direct him to take the immediate possession; to grant interim protection to the petitioner from being arrested in any of the proceedings; to grant costs and to pass such other necessary reliefs.
- 2. The case of the petitioner in a nutshell is as follows:

The petitioner did cloth business in Tenali from 2000 by purchasing the dress materials, sarees, handlooms and other clothes from different people through commission agents and sell the said items to retailers at their residence under the credit scheme system i.e., the payment of the value of the goods would be on installment basis. While the business was flourishing, the petitioner met with an accident and lost his both legs on 17.09.2009. He has spent nearly Rs.10,00,000/towards his treatment for his legs and at present he is walking with Jaipur manufactured legs. Due to which he forced to close his businesses for some time.

He again started business in the year 2011 by borrowing amounts from others. To develop his business and for his family necessities, he borrowed several amounts from the respondents 15 and 16 by way of hand loans. The petitioner joined as subscriber in private chits conducted by respondents 1 to 6 and they obtained empty promissory notes and cheques from the petitioner with duly signed by him towards security purpose only at the time of giving prize money amounts to him. The petitioner has purchased clothes of various types from respondents 6 to 14 on credit basis.

The petitioner paid monthly interest for his creditors regularly upto March, 2021 without any default. The respondents while taking the interest did not issue any receipt. Because of Covid-19 and lock down, the petitioner forced to stop his business in the month of April, 2020 for which, he sustained heavy loss. Due to the said heavy losses in his business, the petitioner is unable to pay even the rents and electricity consumption charges for his house. At present the petitioner has no source of income and he is maintained by his wife and son. The petitioner has no movable and immovable properties on his own except the details of movable properties in the F schedule. Since couple of weeks all the respondents pressurizing the petitioner for repayment of their debts and also for interest due by him to them and also threatening with dire consequences and they also manhandled the petitioner. Hence, this petition is filed.

- 3. The respondents 1 to 16 remained exparts to this proceedings though they received notice from this Court.
- 4. On behalf of the petitioner, petitioner was examined as PW1 and no documents were admitted through him.
- 5. Heard petitioner's counsel. Perused the material available on record.
- 6. Now the point for determination is:

Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for?

7. **POINT**:

- I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-
 - 1. When he is unable to pay his debts; or
 - 2. When his debts are more than his assets; or
 - 3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
- 4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.
- ii) The case of the petitioner is that the petitioner did cloth business in Tenali from 2000. The petitioner did not choose to submit any documentary evidence or any other evidence to establish the fact that he has done the business for the last 13 years. It is also an admitted fact that there is no whisper in the pleadings and evidences about the quantum of loss sustained to them. However, facts which are pleaded and averred by the petitioner that he sustained loss in the business due to health problem and Covid-19 pandamic was remained unchallenged due to non-

filing of counter and in view of non-cross examination of PW1.

- Iii) In fact, there is no whisper in his evidence about the quantum of amounts borrowed from the respondents by way of pleadings though he got mentioned in A schedule as Rs.24,98,000/-. Therefore, the unchallenged evidence adduced by the PW1, the schedule given by petitioner A- schedule shows they became due of Rs.24,98,000/- to respondents 1 to 16 whereas F-schedule shows they are having wearing apparels worth of Rs.900/- and utensils worth of Rs.400/-. Therefore, the unchallenged evidence of PW1 and the pleadings of the petitioner coupled with schedule given by him clearly shows they became due to the respondents to the tune of Rs.24,98,000/- and he is not in a position to discharge the said debts. The respondent also did not raise any objections with regard to any aspects which are pleaded in the petition and evidence placed by him. Hence, he is entitled to declare as an insolvent.
- iv) In fact, the petitioner also sought for relief of to grant interim protection from being arrested in any proceedings. The same cannot be granted in this proceedings as already the proceedings came to an end. If he declared as insolvent, he will certainly entitled for the protection from being arrested in any civil proceedings for the recovery of amount based on steps taken by him as per law. Therefore, this petition is to be allowed.
- 8. In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties of the petitioner are vested with the Official Receiver, if any. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by the Personal Assistant, corrected and pronounced by me in open Court, this the 31st day of October, 2023.)

MARPU SREEDHAR,

1 Addl. Senior Civil Judge, Tenali.

Appendix of Evidence Witnesses Examined

For Petitioner:

P.W.1- Sami Srinivas

For Respondents:

- Exparte -

Exhibits Marked

For Petitioner:

Nil

For Respondent:

Nil

MARPU SREEDHAR,

1 Addl. Senior Civil Judge, Tenali.

[Dis No.943.

Copy to:

1. The Official Receiver, Guntur 2. The District Collector, Guntur.

*

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ADDL SENIOR CIVIL JUDGE

TENALI

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE: TENALI Insolvency petition no 16/2023

Between

Sami Srinivas

Petitioner

And

Sami Subbarao and 15 others

Respondents

PETITION 'A; SCHEDULE FILED ON BEHALF OF THE PETITIONER

LIST OF CREDITORS

S.NO	NAME OF THE CREDITOR	NATURE	AMOUNT
1.	Sami Subbarao	pronote	Rs4,50,000
2.	Ambati Bhuvaneswara Rao	pronote	Rs4,60,000
3.	Gubba Chandrasekhar 2 cheques	pronote	Rs1,25,000
4.	Gangisetty Sirish 1 cheque	pronote	Rs1,30,000
5.	Chekka Surya Brahmam 1 cheque	pronote	Rs60,000
6.	Satuluri satyanarayana 1 cheque	pronote	Rs3,15,000
7.	Maddi Adinarayana	pronote	Rs1,33,000
8.	Sri Sai Bhagavan Textiles	pronote	Rs80,000
9.	K. Gopal	pronote	Rs50,000
10.	Jakka Rambabu	pronote	Rs1,00,000
11.	P. Ramachandra Rao	pronote	Rs30,000
12.	Ch.Venkat Rao	pronote	Rs1,20,000
13.	P.Mohan	pronote	Rs1,15,000
14.	K. Uma Shankar	pronote	Rs30,000
15.	S. Satish	Handloan	Rs2,20,000
16.	PDV. Nagaraju	Handloan	Rs80,000
		Rupees	24,98,000

Advocate for petitioner

Petitioner

I do hereby declare that the above stated facts are true to the best of my knowledge, belief and information.

Tenali

Dt 🎖 -03-2023

Petitioner

Attached to

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE: TENALI Insolvency petition no \% /2023

Between

Sami Srinivas

Petitioner

And

Sami Subbarao and 15 others Respondents

PETITION 'B'SCHEDULE FILED ON BEHALF OF THE PETITIONER

IMMOVABLES POSSED BY THE PETITIONER

MIL

Advocate for petitioner

Petitioner

I do here by declare that the above stated facts are true to the best of my knowledge, belief and information.

Tenali

Dt -03-2023

Petitioner

Attached to decree

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE: TENALI Insolvency petition no $\frac{9}{2}$ /2023

Between

Sami Srinivas

Petitioner

And

Sami Subbarao and 15 others Respondents

PETITION 'C'SCHEDULE FILED ON BEHALF OF THE PETITIONER

BANK DEPOSITS AND SHARES IN JOINT STOCK COMPANIES AND GOVRNMENT SECURITIES POSSESSED BY THE PETITIONER

NIL

Advocate for petitioner

Petitioner

I do hereby declare that the above stated facts are true to the best of my knowledge, belief and information.

Tenali

Dt (8 -03-2023

Petitioner

anached to d

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE: TENALI Insolvency petition no \%/2023

Between

Sami Srinivas

Petitioner

And

Sami Subbarao and 15 others Respondents

PETITION 'E'SCHEDULE FILED ON BEHALF OF THE PETITIONER

CASH ON HAND

NIL

Advocate for petitioner

Petitioner

I do hereby declare that the above stated facts are true to the best of my knowledge, belief and information.

Petitioner

Tenali
Dt 8 -03-2023

Attached to decree

Whythere is a second of the se

In the court of the additional senior civil judge: tenali insolvency petition no % /2023

Between

Sami Srinivas Petitioner

And

Sami Subbarao and 15 others Respondents

PETITION 'F'SCHEDULE FILED ON BEHALF OF THE PETITIONER Movable properties

		•
S.NO	DESCRIPTION OF THE PROPERTY	VALUE
1.	pants 3 nos	Rs 600
2	Shirts 3 Nos	Rs 300
3	Steel plates 2nos	Rs 100
4	Bucket 1 No	Rs 100
5	Blankets 2Nos	Rs 200

Advocate for petitioner

Petitioner

I do hereyby declare that the above stated facts are true to the best of my

Total

knowledge, belief and information.

Tenali Dt -03-2023

Petitioner

1300

and to decree

ADDITIONAL SENIOR CIVIL JUDGE'S COURT TENALI

Monday, this the 30th day of October, 2023

Insolvency Petition No.29 of 2020

Between:

Kadapa Venkateswara Rao, S/o.China Sambaiah, aged 42 years, Hindu, R/o.Nehruvari Street, Rajakpeta, Tenali Mandal, Guntur District, Tenali JCJC.

...Petitioner

And

- 1. Pulivarthi Gopala Rao, S/o.Venkateswarlu, aged about 60 years, Hindu, r/o.D.No.2-72, Hindu-Muslim Road, Islampet, Tenali, Guntur District, Tenali JCJC.
- 2. Padarthi Krishnaveni, S/o.late Subbarao, aged about 52 years, Hindu, R/o.D.No.1-40-26, Yalurivari Street, Nazerpet, Tenali, Guntur District, Tenali JCJC.
- 3. Kakaraparthi Annapurna, W/o.Venkateswara Rao, aged about 50 years, Hindu, R/o.D.No.1-38-29, Puttavari Street, Nazerpet, Tenali, Guntur District, Tenali JCJC.
- 4. Vajula Rama Rao, S/o.Ranga Rao, aged about 48 years, Hindu, R/o. D.No.21-32-9, Brahmana Apara Karmasalavari Street, Ramalingeswarapet, Tenali, Guntur District, Tenali JCJC.
- 5. D.Surdhan, S/o.Anjaneya Sastry, aged about 45 years, Hindu, R/o.D.No.1-45-27, Anugoluvari street, Nazerpet, Tenali, Guntur District, Tenali JCJC.
- 6. Addanki Kumar, S/o.Rangarao, aged about 50 years, Hindu, R/o.D.No.1-38-32, Kolluruvari Street, Nazerpet, Tenali, Guntur District, Tenali JCJC.
- 7. Vempati Ravindra, S/o.Uma Maheswara Rao, aged about 50 years, Hindu, R/o.D.No.1-29-22/3, Maha Lakshmivari Street, Near Dr.P.V.Rao House, Nazerpet, Tenali, Guntur District, Tenali JCJC.
- 8. Pulivarthi Suresh S/o.Vara Prasad, aged about 45 years, Hindu, R/o.Devarsha Apartment, Plot No.201,Balajiraopet, Tenali, Guntur District, Tenali JCJC. ...Respondents

This Insolvency Petition is coming on 18.07.2023 before me for hearing in the presence of Sri K.Chandra Sekhar, Advocate for Petitioner and of Sri D.Srinivas, Advocate for Respondent No.1 and respondents 2 to 8 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner as insolvent, costs and for other reliefs.

2. The case of the petitioner in a nutshell is as follows:

He established a laundry shop business in the name and style of "Lasya Laundry Shop" in the year 2009 at Tenali. He borrowed the amounts for development of his business. In that process, he borrowed the same from respondents 1 to 8 at higher rate of interest and they demanded for signed unfilled empty promissory notes and cheques. They have also assured that the same are obtained only for the purpose of security and agreed to return the same after discharge of said debts. Out of the income derived from the business, he used to pay the major portion of the amounts to the respondents 1 to 8, but they did not permitted to make an endorsement therein and no receipts were also issued in token of payment of said amounts. In the year 2019, he suffered with eye problem, B.P, Sugar and other diseases and his business was not running in a good condition and as such he sustained heavy loss. The workers also did not cooperate with him and as such he sustained loss in the said business. Under these circumstances, the respondents pressurized him for repayments and as such he was not in a position to run the business and the same was collapsed. Therefore, his assets are sufficient to discharge the debts. He was constrained to file this petition to declare him as insolvent.

3. The respondents 2 to 8 remained exparts to this proceedings. Respondent No.1 filed counter denied all the material allegations as false and had inter-alia contended as follows:

The petitioner is a best business man in their caste profession and no loss was sustained by him in his business which was established long back. He is doing business personally and also getting profits. On 10.01.2021, he borrowed amount of Rs.3 lakhs from the first respondent to meet his family expenses and executed a promissory note in his favour by agreeing to repay the same with an interest @24% p.a. The petitioner issued a cheque bearing No.077125 dated 10.08.2022 drawn on IDBI bank, Tenali branch towards discharge of part satisfaction of debt and the same was dishonoured due to insufficient funds. Then he got registered a complaint in CC.58/2021 on the file of the learned I Addl.Judicial Magistrate of First class under Section 138 of the Negotiable Instruments Act and NBW was issued against the petitioner and the same is pending for execution. The petitioner has got sufficient profits, movable and immovable properties. He is having huge amounts in his account in different banks. The respondents 2 to 8 are his kith and

kin and the promissory notes shown in 'A' schedule are not correct and collusively brought into the schedule. The petitioner wrongly mentioned the debt as Rs.2 lakhs instead of Rs.3 lakhs. The petitioner fails to disclose his assets correctly and as such, this petition is liable for dismissal.

- 4. During the course of trial, petitioner was examined as PW1 and no documents were marked through him. He got examined one third party as PW2. On behalf of the respondents, the first respondent alone was examined as RW1 and no documents were marked through him.
- 5. The petitioner as PW1 deposed about the debt contracted from the respondents 1 to 8 and his incapacity to clear the debts. PW2 who is the third party and who worked under him deposed about the present status of the PW1 and his inability to discharge the debt amount. The first respondent as RW1 reiterated his contentions in the counter and deposed that the petitioner is having sufficient amounts to repay the debt amount and he is having financial capacity to clear the same.
- 6. Heard. Perused the material available on record.
- 7. The learned counsel for the petitioner submits that the evidence of the PW1 and 2 coupled with the admission of the respondent No.1 as RW1 clearly establishes that the petitioner is not in a position to clear the debts contracted to them and as such, he is entitled for the relief as prayed for. Per contra, the respondent No. 1 vehemently contends the admission of PW1 itself shows that he suppressed material facts more particularly with regard to the existence of cell phone and silver ring. Therefore, he is not entitled for the relief prayed by him.
- 8. Now the points for determination is:
- 1.Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for? And
 - 2. To what relief?

9. **POINT No.1:**

I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the

debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-

- 1. When he is unable to pay his debts; or
- 2. When his debts are more than his assets; or
- 3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
- 4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.
- ii) The contention of the petitioner is that he borrowed the amounts from the respondents for the purpose of investment in the business and he sustained huge loss due to ill health and non-cooperation from workers. It is an admitted fact no iota of evidence was placed by the petitioner that he has been suffering with ill health as admitted by him in his cross examination.
- iii) The further case of the petitioner is that he had done a laundry business in the name and style of Lasya Laundry shop and sustained huge loss due to noncooperation of workers and due to ill health. There is no dispute with regard to the conduction of the said business as the respondents also taken a plea that the petitioner is running laundry business and he is good at his profession. admitted in his cross examination that he did not file any details with regard to the place of commencement of the business, expenditure in the said business, particulars of loss in the said business so also date of closure of the business. He further admits that he did not mention in the petition the name of the six persons who worked under him and did not choose to file account copy of his shop. Admittedly, no documentary evidence submitted by the petitioner with regard to the particulars of the loss sustained by him in the business. However, he got examined one of the worker namely Srinivas as PW2. He stated in his chief examination that the petitioner sustained loss in the business and he closed the business as he was unable to pay the wages also. He admitted in his cross examination that they have not submitted any documentary evidence to say that he worked under the petitioner and did not mention about the names of the other five persons who worked under him. He further admits that he has not mentioned in his affidavit about quantum of wages due to him and number of months to be payable. It is suggested him to petitioner is his uncle. We cannot expect a documentary evidence in token of his employment at the laundry shop without there being any

licence for the said shop. Therefore, the above said admissions of PW2 is noway helpful to the respondents to say that the petitioner is doing the business at present. The respondents did not choose to suggest the PW1 or PW2 that the petitioner is continuing in the said business even till today in any manner and there was a profit from his business. The respondents fails to elicit anything from PW1 and PW2 about existence of some other assets either movable or immovable in the name of petitioner.

- The first respondent was examined RW1 and he deposed that the petitioner is iv) having movable and immovable properties which are to be disclosed in the petition and suppressed the same. RW1 admitted in his cross examination that he granted loan for the purpose of business and he does not know whether the petitioner is doing his business at his shop or not. Admittedly, the respondent fails to bring any evidence before this Court about the existence of some other properties to be disclosed by the petitioner. He admitted in his cross examination that he has not submitted any documentary evidence about the particulars of properties of the petitioner. The respondent did not choose to whisper about the particulars of properties either movable or immovable which are to be included and available for disposal off to clear the debts. However, the respondent got admission from the PW1 that he did not mention silver ring in the present I.P of B-schedule and mobile phone. The petitioner clarified that the said phone belongs to his wife. He stated that he did not file any documentary proof to show that the same was belongs to his wife. Admittedly there is no such pleadings from the respondent that the petitioner suppressed the above said properties in disclosing the same. Even assuming for the moment that the above said two properties are suppressed in disclosing before this Court, the same cannot be treated as material suppression of the fact as the same are not sufficient to satisfy to discharge the debts or cannot be treated as valuable. Moreover, the respondent fails to elicit from the PW1 about existence of said property by the date of filing of petition to say that it is suppression of material fact in the schedule.
 - v) The another contention raised by the respondent No.1 is that the remaining respondents are kith and kin of petitioner. It is an admitted fact that all the remaining respondents remained exparte. PW1 admitted that he has no idea

whether they filed any civil or criminal cases against him. But nothing was elicited from his evidence about the relationship between the petitioner and respondents 2 to 8 to say that their debts are fictitious and they were impleaded only to strengthen the case. The fact which was stated by way of schedule about the particulars of debt contracted from other creditors was also not disputed by the respondent No.1. Moreover, the remaining respondents did not raise any objection. In absence of any material elicited by way of cross examination with regard to the relationship among the petitioner and remaining respondents, this Court is unable to believe the version of the petitioner that the other debts are fictitious debts and same are described for the purpose of filing of this petition. Furthermore, the petition is maintainable even against the single creditor. Therefore, the above said aspect is also not a ground to reject the application.

In the light of the above discussion, the petitioner establishes that his debts are more than Rs.15,75,000/- whereas his properties are worth of Rs.1,400/- as per Schedule 'B' and same are not sufficient to discharge the debts. Though the respondent No.1 elicited about possession of one silver ring and one cell phone with the petitioner during his cross examination, the same cannot be considered as a suppression of material facts or assets and to prove the capability to discharge the debts or atleast suppression of material facts at the time of filing of the petition as nothing was elicited from his evidence about the existence of movables by the time of filing of the petition. Moreover, the respondent No.1 fails to bring any evidence or atleast by way of suggestions about the suppression of movable and immovable properties to reject the application to declare the petitioner as an insolvent. It is not the case of the respondent No.1 that the petitioner suppressed liquid cash as he contended that the same was kept in the bank accounts. Despite of said pleading, the respondent No.1 failed to bring evidence about name of the bank and other particulars and nothing was suggested to him that there is a dispute with regard to debt. There is a dispute in between the petitioner and respondent No.1 with regard to quantum of debt amount. Admittedly the respondent No.1 filed Calendar case under Section 138 of the Negotiable Instruments Act to prosecute the petitioner for

dishonour of cheque which is issued towards part payment of debt and as such the dispute with regard to quantum of debt will be decided. Therefore, viewed from any angle, the petitioner is entitled for relief to declare him as an insolvent. Accordingly, this point is answered in favour of the petitioner.

10. Point No.2: To what relief?

In view of the finding of this Court in point No.1, the petitioner could able to establish that his debts are more than his assets and he was unable to pay the said debts and has entitlement to declare as an insolvent and this petition is to be allowed. Hence, this point is answered in favour of the petitioner.

In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties of petitioner are vested with the Official Receiver, if any. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by the Personal Assistant, corrected and pronounced by me in open Court, this the 30th day of October, 2023.)

Sd/-,Additional Senior Civil Judge,
Tenali.

Appendix of Evidence Witnesses Examined

For Petitioner:

PW1 - Kadapa Venkateswara Rao

PW2 – Vutikonda Srinivas

For Respondent:

RW1 – Pulivarthi Gopala Rao

Exhibits Marked

Nil

Sd/-,Additional Senior Civil Judge,
Tenali.

[Dis No.832.

ADDITIONAL SENIOR CIVIL JUDGE'S COURT TENALI

Friday, this the 10th day of November, 2023

Insolvency Petition No. 38 of 2023

Between:

Kesamsetti Venkatesh S/o.Late Srinivasa Rao, aged about 32 years, Hindu, Relatives protection, H.No.31-1-4, Kumar Colony, Chenchupet, Tenali, Presently at Dilshuknagar, Hyderabad (Telangana).

...Petitioner

And

- 1. Maguluri gopi S/o.Sambaiah, aged about 30 years, Hindu, Business and R/o.at H.No.5-233/1, Kathevaram (Tenali Mandal), Guntur District.
- 2. Vemuru Subba Rao, S/o.Sundara Rao, aged about 42 years, Hindu, Business, r/o.at H.No.13-72, Vemuru (Village and Mandal) Guntur District.
- 3. Isaram Ramesh Babu S/o.Manikya Rao, aged about 30 years, Hindu, Business, and R/o.D.No.14-69-96, C.M.Colony, Kathevaram (Tenali Mandal), Guntur District.
- 4. Peeka Ravindra Babu S/o.Kristu Kumar, aged about 35 years, Hindu, Business, R/o.D.No.3-18, Champadu, Vemuru Mandal, Bapatla District.
- 5. Manikanta Swamy Addepalli S/o.Late Venkata Rama Rao, aged about 34 years, Hindu, Business, r/o.H.No.15-4-23, A.S.N.Rice Mill Compound, Tenali, Tenali JCJC.

...Respondents

This Insolvency Petition is coming on 07.11.2023 before me for hearing in the presence of Sri A.Kishore, Advocate for Petitioner and Respondents 1 to 5 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

- 1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner is as an insolvent; to administer the estate of the petitioner under the provisions of the Provincial Insolvency Act; to grant costs and to pass such other necessary reliefs.
- 2. The case of the petitioner in a nutshell is as follows:

The petitioner previously did private chit business from the year 2016. For improve of his chit business, petitioner borrowed several amounts from respondents as hand loans and some amounts by way of executing pronotes on higher rate of interest @ Rs.10/- per hundred per month. 5th respondent obtained unfilled pronote

and unfilled cheque from the petitioner as security purpose. Subsequently, the petitioner paid interest amounts to some of the respondents. Thereafter, the petitioner sustained heavy loss due to the payment of higher rate of interest amounts to the respondent, in addition to that due to Covid-19 pandemic, the petitioner failed to run his private chit business in a good manner and in the result, the petitioner sustained heavy loss and he is unable to discharge the debts due to the respondents. Even in the said circumstances also, the petitioner paid some amounts to the respondents towards interest and he lost all the investment and he became dependent person and is unable to pay the debts due to the respondents completely. The respondents are also threatening the petitioner with dire consequences for discharging their debts. Due to threat by the respondent, the health of the petitioner was spoiled and he is unable to do any manual work and even not in a position to maintain his family and is depending upon the mercy of his relatives and others. Petitioner has no movable or immovable properties except mentioned in the schedule and his liabilities are far exceed his assets and he has no capacity to discharge his debts. Hence, this petition is filed.

- 3. The respondents 1 to 5 remained exparts to this proceedings though they received notice from this Court.
- 4. On behalf of the petitioner, petitioner was examined as PW1 and no documents were admitted through him.
- 5. Heard petitioner's counsel. Perused the material available on record.
- 6. Now the point for determination is:

Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for?

7. **POINT**:

- I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-
 - 1. When he is unable to pay his debts; or
 - 2. When his debts are more than his assets; or
 - 3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
- 4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.

- ii) The case of the petitioner is that the petitioner did private chit business from the year 2016 and to improve his chit business, the petitioner borrowed several amounts from respondents as hand loans and executed pronotes on higher rate of interest and he paid some of the interest amount, but failed to pay complete debts and he sustained huge loss due to Covid-19 pandemic. It is also an admitted fact that there is no whisper in the pleadings and evidences about the quantum of loss sustained to them. However, facts which are pleaded and averred by the petitioner that he sustained loss in the business due to health problem and Covid-19 pandamic was remained unchallenged due to non-filing of counter and in view of non-cross examination of PW1.
- Iii) In fact, there is no whisper in his evidence about the quantum of amounts borrowed from the respondents by way of pleadings though he got mentioned in A schedule as Rs.8,25,000/-. However, the unchallenged evidence adduced by the PW1, the schedule given by petitioner A- schedule shows they became due of Rs.8,25,000/- to respondents 1 to 5 whereas C-schedule shows they are having wearing apparels worth of Rs.850/- only . Therefore, the unchallenged evidence of PW1 and the pleadings of the petitioner coupled with schedule given by him clearly shows they became due to the respondents to the tune of Rs.8,25,000/- and he is not in a position to discharge the said debts. The respondent also did not raise any objections with regard to any aspects which are pleaded in the petition and evidence placed by him. Hence, he is entitled to declare as an insolvent, consequently, this point is to be allowed.
- 8. In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties of the petitioner are vested with the Official Receiver, if any. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by the Personal Assistant, corrected and pronounced by me in open Court, this the 10th day of November, 2023.)

Sd/-,Additional Senior Civil Judge,
Tenali.

Appendix of Evidence Witnesses Examined

For Petitioner:

For Respondents:

P.W.1- Kesamsetti Venkatesh

- Exparte -

Exhibits Marked

For Petitioner:

Nil

For Respondent:

Nil

Copy to:

Sd/-,

Additional Senior Civil Judge, Tenali.

1. The Official Receiver, Guntur 2/The District Collector, Guntur.

[Dis No.858.

ADDL. SENIOR CIVIL JUDGE

00828

the Hon'ble Addl. Senior Civil Judge. TENALI

BNADA

I.P.No. % of 2023

Kesamsatti Venkatesh

Petitioner/

Va.

Maguluri Opi and others

Respondents

'A' schedule (Liabilities) filed on behalf of Petitioner

sl.N	lo. Name of respondent/cred	itor	Nature of debt.	Amount Rs.
1.	Maguluri Gopi	**	Hand 10an	RS. 1.00.000-00
2.	Vemuru subba Rao	**	Pronote	1.00.000-00
3.	Isaram Ramesh Babu	••	Hand loan	1.50.000-00
4.	Peeka Ravindra Babu	**	Hand loan	2,75,000-00
5.	Manikanta Swamy Addepalli	**	Pronote & Cheque	200,000-00

Total .. Rs. 8,25,000-00

Advocate for Petitioner

Petitioner

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali.

D/23-08-2023.

Petitioner.

Attached to decree

f the Hon'ble Addl. Senior Civil Judge.

TENALI

I.P.No. 38 /2023

Kesamsetti Venkatesh

Petitioner

Vs.

Maguluri Gopi and others

Respondents

B schedule filed on behalf of Petitioner/Debtor

Immovable Properties:-

NIL

Advocate for Petitioner.

Datitionar

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali.

D/23-08-2023.

Petitioner.

Attached to desce

In the Court of the Fon'ble Addl. Senior Civil Judge. TENALI

I.P.No. 30 of 2023

Kesamsetti Venkatesh

Petitioner/ Debtor

Vs.

Maguluri Copi - and others

Respondents

C schedule filed on behalf of the Petitioner.

Movable properties ---

1.	Panta - 2 No	S		**	Bs. 300-00
2.	shirts - 2 N	08.	e grande Kajan di dina	**	200-00
3.	Drawer & Ban	ians		••	150-00
4.	Mat With Bed	an eet	e -	**	100-00
5.	Slippers -			**	100-00

I do hereby declare that the facts stated are true to the best of my knowledge, information and belief.

Tenali.

5. Slippers -

D/23-08-2023.

Attached to desce

An the Court of the Hon*ble Addl. senior Civil Judge.

TENALI

I.P.No. 38 of 2023

Kesamsetti Venkatesh

Petitioner/ Debtor

Ve.

Maguluri Gopi - and others

Respondents

D Schedule filed on behalf of Petitioner

Outstandings -

NIL

Advocate for Petitioner.

Petitioner

I do hereby deal are that the facts stated are true to the best of my knowledge, information, and belief.

Tenali,

D/23-08-2023.

Petit oner

Attached to desce

TENALI

Present: Sri Marpu Sreedhar Addl.Senior Civil Judge, Tenali

Monday, this the 6th day of November, 2023

Insolvency Petition No. 56 of 2021

Between:

Kaviyarasan Murugesan S/o.Murugesan Murruggan, aged about 26 years, Hindu, Business and R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.

...Petitioner

And

- 1. Ganesh Ramesh S/o.Ganesh aged about 37 years, Hindu, Business and R/o.1-48-
- 9, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 2. Murugesan Manikanta S/o.Murugesan aged about 32 years, Hindu, Business, R/o.D.No.1-38-30/2, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 3. Krishna Kumar Vigneswaran S/o.Krishna Kumar, aged about 30 years, Hindu, Business and R/o.D.No.1-39-27A/B, Flat No.5, Kamineni Towers, Puttavari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 4. Tirumalasetti Srinivasa Rao, S/o.Veera Raghavaiah, aged about 51 years, Hindu, Ex-counselor and R/o.D.No.1-37-26/1, Angoluvari Veedhi, Nazarpeta, Tenali, Guntur District. Tenali JCJC.
- 5. Chinka Vamsi S/o.Gangadhara Rao, aged about 32 years, Hindu, Business, r/o.DnO.1-48-2, Angoluvari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 6. Suggana Prasanna Lakshmi W/o.Mohan Rao, aged about 33 years, Hindu, House wife, R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 7. Suggana Krishna S/o.Nancharaiah, aged about 60 years, Hindu, Busienss and R/o.D.No.R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 8. Sethupathi Ilango S/o.Sethupathi, aged about 51 years, Hindu, Business, R/o.D.No.1-39-27A/B, Flat No.5, kamineni Towers, Puttavari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 9. Palani Swamy Prakash s/o.Palani Swamy aged about 30 years, Hindu, Business and R/o.D.No.4-7-15/1, Vidyanagar, Keerthi Hospital Raod, Near Watertank, Ponnuru, Guntur District, Ponnuru JCJC.
- 10. Srinivas Madan Kumar S/o.Srinivas, aged about 36 years, Hindu, Business and R/o..D.No.4-7-15/1, Vidyanagar, Keerthi Hospital Raod, Near Watertank, Ponnuru,

Guntur District, Ponnuru JCJC.

- 11. Manikyam Vijay S/o.Manikyam, aged about 30 years, Hindu, Business and R/o.D.No.23-135/D1, Opp. Sapthagiri Bank, Yanamalakudhuru, Vijayawada, Krishna District, Vijayawada JCJC.
- 12. Kothavarapu Vasu S/o.Venkateswarlu, aged about 32 years, Hindu, Business, r/o.D.No.1-18-82, Vahab Road, Salipeta, Tenali, Guntur District, Tenali JCJC.
 ...Respondents

This Insolvency Petition is coming on 01.11.2023 before me for hearing in the presence of Sri T.Prabhakara Rao, Advocate for Petitioner and of Sri M.Manikya Rao, Advocate for Respondent No.4 and respondents 1 to 3 and 5 to 12 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

:: O R D E R ::

- 1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner as insolvent; to grant protection to the petitioner from being arrested in any of the proceedings taken by the respondents and for other reliefs.
- 2. The case of the petitioner in a nutshell is as follows:

The petitioner was a business man and he done hotel business from 2015 under the name and style of Hotel Madras Parota and his business located at D.No.2-1-6 of Shivaji chowk, Tenali and he invested huge amounts during the course of said business for its investment. He borrowed an amount of Rs.2 lakhs from the first respondent on 10.01.2020 and handed over one signed promissory note and two blank cheques of HDFC Bank, Tenali with his signatures. He also borrowed an amount of Rs.3 Lakhs, Rs.2 lakhs from 2nd and 3rd respondents respectively and handed over blank promissory notes and cheques. He borrowed an amount of Rs.5 lakhs, Rs.3,50,000/-,Rs.3,00,000/-, Rs.1,70,000/-, Rs.5 lakhs, Rs.3 lakhs, Rs.6 lakhs Rs.2 lakhs and Rs.5 lakhs from respondents 4 to 12 and he handed over the empty promissory notes and blank cheques with his signatures to them to that effect. He could able to discharge some debts but he was unable to discharge all the debts as he sustained loss in his business due to covid-19 became and due to lock down imposed by the Government. The 4th respondent who is the ex-counselor and husband of the present Municipal counselor of ruling party and they came to petitioner's house on 05.10.2021 at 10.30 PM and threatened him and kept him in the police station and obtained his signatures on Non-Judicial stamps worth of Rs.100/-, five empty unfilled Pronotes and 5 cheques with his signatures. They threatened him and his family members by demanding the said amounts. The total amount became due by him to his creditors as mentioned in A schedule is Rs.41,20,000/-. He has no valuable property and he handed over the valuable house hold articles to some of the creditors. Therefore, the liabilities to be discharged is very much high and he has no valuable assets of movables except the movables mentioned in the schedule. Hence, this petition is filed.

3. All the respondents except respondent No.4 remained exparte to this proceedings. Respondent No.4 filed counter and denied the material allegations in the petition are all false and had inter-alia contended as follows:

The petitioner borrowed an amount of Rs.7 lakhs from him on 13.03.2021 for his business and executed a pronote in his favour by agreeing to repay the said amount with an interest of @ 24% per annum. He never obtained any other promissory notes or cheques as alleged in the petition and he was not kept in the police station. The petitioner has got sufficient money to discharge the debts and this petition is filed only with a view to evade the payment of debts. The petitioner is hale and healthy person and earned huge profits even in Covid-19 pandemic situation. Some of the respondents are close friends and relatives of the petitioner and the schedule given by the petitioner is with false particulars. Thereby he prayed for the dismissal of the petition.

- 4. During the course of trial, petitioner was examined as PW1 and Ex.P1 is certificate registration of establishment of Hotel Madras Parota, is marked through him. On behalf of the respondents, the respondent No.4 alone was examined as RW1 and no documents were marked through him.
- 5. The petitioner as PW1 deposed about the debt contracted from the respondents 1 to 12 and his incapacity to clear the debts. The fourth respondent as RW1 reiterated his contentions in the counter and deposed that the petitioner is having sufficient amounts to repay the debt amount and he is having financial capacity to clear the same.
- 6. Heard. Perused the material available on record.

- 7. The learned counsel for the petitioner submits that the evidence of the PW1 coupled with the admission of the respondent No.4 as RW1 clearly establishes that the petitioner is not in a position to clear the debts contracted to them and as such, he is entitled for the relief as prayed for. Per contra, the respondent No. 4 vehemently contends the petitioner is having sufficient movable and immovable properties and as such, he is not entitled for the relief prayed by him.
- 8. Now the points for determination is:
- 1.Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for? And
 - 2. To what relief?

9. **POINT No.1:**

- I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-
 - 1. When he is unable to pay his debts; or
 - 2. When his debts are more than his assets; or
 - 3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
- 4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.
- ii) The contention of the petitioner is that he borrowed the amounts for the purpose of investment in the business in the name and style of Hotel Madras Parota. It is an admitted fact he done the said business and in support of his contention, he also submitted certificate of registration of said business as Ex.P1 and there is no dispute with regard to the said aspect. He deposed that he sustained loss in the business and he borrowed the amounts towards investment of said business. The above said fact deposed by him by way of his chief examination and the respondent No.4 fails to elicit anything from his evidence to disprove the said fact. PW1 admitted in his cross examination that he borrowed the amounts in the year 2020 and 2021 as per averments in his petition. Nothing was elicited from his evidence to disbelieve his version that he sustained loss due to pandemic and lockdown imposed during Covid-19. Though the petitioner fails to submit any

evidence about the quantum of loss sustained by him, but the unchallenged testimony of PW1 clearly establishes that he sustained loss in the business.

- iii) The respondent No.4 contends that the petitioner is having sufficient movable and immovable properties to pay the debt amount. In reply to the above said contention, the petitioner submits that he has no assets to satisfy the debt amount and nothing was elicited from the respondent in support of his contention either by way of positive evidence or elicited anything from his evidence. It is an admitted fact the respondent could not elicit anything from the evidence of PW1 about existence of movable or immovable property. However, he got admission from the evidence of PW1 that he is getting income of Rs.400/- to Rs.500/- per day as he is working in the hotel. The above said admission is not a ground to say that the petitioner is capable to discharge the debt. Though the respondent No.4 as RW1 deposed that the petitioner earned huge amounts in his business, he admitted in his cross examination that he cannot submit any documentary evidence to say that the petitioner is running the business at present and to establish that he acquired the properties at Tamilnadu. Admittedly, no material either oral or documentary submitted by the respondent to say that the petitioner acquired the properties and the same are suppressed in disclosing before this Court. Moreover, the respondent No.4 did not challenge the particulars mentioned in the schedule A to E. the contention of the respondent No.4 is that some of the creditors which are shown as the respondents are relatives and friends of the petitioner. In support of his contention, he elicited from the evidence of PW1 is that the second respondent is his relative, 8th respondent is his owner and 11th respondent is his co-worker. Based on above said relationship, we cannot deny the borrowal of the amounts as the above said respondents have not raised any objection. It is quite natural to borrow the amounts from near and dear. Hence, the above said aspect is not material to discredit the version of the petitioner about his incapability to pay the debt amount.
- iv) In the light above discussion, the petitioner establishes his case that he is unable to pay the debts as mentioned in the schedule D to the tune of Rs.41,20,000/- and the particulars mentioned in the other schedules A to C and E are not sufficient to satisfy the debt amount as described in F schedule to the tune of Rs.41,19,250/-. The respondent No.4 also did not choose to question the particulars and properties mentioned in A to F schedule as false in specific.

Therefore, the petitioner is entitled to declare as insolvent. Accordingly this point is answered in favour of the petitioner.

10. Point No.2: To what relief?

In view of findings of this court for point No.1, the petitioner is entitled to be declared as an insolvent. The petitioner also sought for relief of protection from being arrested in any of the proceedings taken by the respondents. That aspect can be decided on application filed by the petitioner if the occasion arises and this Court cannot pass such blanket order for complete exemption of arrest for any proceedings. Accordingly, this point is answered.

In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties of petitioner are vested with the Official Receiver, if any. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by Personal Assistant, corrected and pronounced by me in open Court, this the 6th day of November, 2023.)

Sd/-,

Additional Senior Civil Judge, Tenali.

Appendix of Evidence Witnesses Examined

For Petitioner:

PW1- Kaviyarasam Murugesan

For Respondents:

RW1 – Tirumalasetti Srinivasa Rao

Exhibits Marked

For Petitioner:

Ex.P1 is certificate of registration of establishment of Hotel Madras Parota.

For Respondents:

Nil

Sd/-,

Additional Senior Civil Judge,

Tenali.

HOGE

Present: Sri Marpu Sreedhar Addl.Senior Civil Judge, Tenali

Monday, this the 6th day of November, 2023

Insolvency Petition No. 56 of 2021

Between:

Kaviyarasan Murugesan S/o.Murugesan Murruggan, aged about 26 years, Hindu, Business and R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.

...Petitioner

And

- 1. Ganesh Ramesh S/o.Ganesh aged about 37 years, Hindu, Business and R/o.1-48-9, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 2. Murugesan Manikanta S/o.Murugesan aged about 32 years, Hindu, Business, R/o.D.No.1-38-30/2, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 3. Krishna Kumar Vigneswaran S/o.Krishna Kumar, aged about 30 years, Hindu, Business and R/o.D.No.1-39-27A/B, Flat No.5, Kamineni Towers, Puttavari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 4. Tirumalasetti Srinivasa Rao, S/o.Veera Raghavaiah, aged about 51 years, Hindu, Excounselor and R/o.D.No.1-37-26/1, Angoluvari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 5. Chinka Vamsi S/o.Gangadhara Rao, aged about 32 years, Hindu, Business, r/o.DnO.1-48-2, Angoluvari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 6. Suggana Prasanna Lakshmi W/o.Mohan Rao, aged about 33 years, Hindu, House wife, R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 7. Suggana Krishna S/o.Nancharaiah, aged about 60 years, Hindu, Busienss and R/o.D.No.R/o.D.No.1-48-9/A, Kolluru Vari Street, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 8. Sethupathi Ilango S/o.Sethupathi, aged about 51 years, Hindu, Business, R/o.D.No.1-39-27A/B, Flat No.5, Kamineni Towers, Puttavari Veedhi, Nazarpeta, Tenali, Guntur District, Tenali JCJC.
- 9. Palani Swamy Prakash s/o.Palani Swamy aged about 30 years, Hindu, Business and R/o.D.No.4-7-15/1, Vidyanagar, Keerthi Hospital Raod, Near Watertank, Ponnuru, Guntur District, Ponnuru JCJC.
- 10. Srinivas Madan Kumar S/o.Srinivas, aged about 36 years, Hindu, Business and R/o..D.No.4-7-15/1, Vidyanagar, Keerthi Hospital Raod, Near Watertank, Ponnuru, Guntur District, Ponnuru JCJC.
- 11. Manikyam Vijay S/o.Manikyam, aged about 30 years, Hindu, Business and R/o.D.No.23-135/D1, Opp. Sapthagiri Bank, Yanamalakudhuru, Vijayawada, Krishna District, Vijayawada JCJC.

12. Kothavarapu Vasu S/o.Venkateswarlu, aged about 32 years, Hindu, Business, r/o.D.No.1-18-82, Vahab Road, Salipeta, Tenali, Guntur District, Tenali JCJC.

...Respondents

This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner as insolvent; to grant protection to the petitioner from being arrested in any of the proceedings taken by the respondents and for other reliefs.

Petition presented on : 20.10.2021
Petition filed on : 24.11.2021

Cause of action for the petition arose in the year 2015 when the petitioner started hotel business under the name and style of Hotel Madras Parota and when by remodeling the premises, appointing the chefs at D.No.2-1-68, Shivaji Chowk, Tenali and when he incurred huge amounts in the business and when the petitioner borrowed an amount of Rs.2,00,000/- on 10.01.2020 from the 1st respondent and when Rs.3,00,000/- on 12.01.2020 from the 2nd respondent and when Rs.2,00,000/- on 01.02.2020 from the 3rd respondent and when Rs.5,00,000/- on 13.03.2020 from the 4th respondent and when 3,50,000/- on 01.11.2020 from the 5th respondent and when Rs.3,00,000/- on 31.12.2020 frm the 6th respondent and when Rs.1,70,000/- on 12.01.2021 from the 7th respondent and when Rs.5,00,000/- on 16.01.2021 from the 8th respondent and when Rs.3,00,000/- in the 1st week of February from the 9th respondent and when Rs.6,00,000/- on 17.12.2020 from the 10th respondent and when Rs.2,00,000/- on 27.02.2021 from the 11th respondent and when Rs.5,00,000/- on 15.03.2021 from the 12th respondent and when and knowing that some of the respondents are pressured the petitioner and threatened him with dire consequences and got obtained some unfilled bank cheques to harass the petitioner and due to pressure of the respondents the petitioner unable to clear the debts and the petitioner is therefore filed this petition and the petitioner is residing at Nazarpeta, Tenali - all within the jurisdiction of this Court.

Valuation of this petition is filed U/s.10 of Provincial Insolvency Act to adjudicate and declare the petitioner as insolvent, a fixed Court fee of Rs.10/- is herewith paid U/s.1 Art.II (ii) of A.P.C.F & S.V Act.

This Insolvency Petition is coming on 01.11.2023 before me for hearing in the presence of Sri T.Prabhakara Rao, Advocate for Petitioner and of Sri M.Manikya Rao, Advocate for Respondent No.4 and respondents 1 to 3 and 5 to 12 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made doth order and decree as follows:

- i) That the petition be and the same is hereby allowed, and the petitioner is hereby adjudicated as insolvent and he shall apply for discharge within six months.
- ii) That the properties of petitioner are vested with the Official Receiver, if any.
- Iii) Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.
- iv) that both the parties do bear their own costs.

Given under my hand and the seal of the Court, this the 6th day of November, 2023.

Sd/-,Additional Senior Civil Judge,
Tenali.

Table of Costs "No CM & FC filed on either side."

NB:-Copies of schedule hereto attached.

Sd/-, Additional Senior Civil Judge, Tenali.

[Dis No.859.

The Interpret wheton

I.P.NO. 56/2021.

Between:

Kaviyarasan Murugesan

... Petitioner.

And

- 1. Ganesh Ramesh
- 2. Murugesan Manikanta
- 3. Krishna Kumar Vigneswaran
- 4. Tirumalasetti Srinivasa Rao
- 5. Chinka Vamsi
- 6. Suggana Prasanna Lakshmi
- 7. Suggana Krishna
- 8. Sethupathi Ilango
- 9. Palani Swami Prakash
- 10. Srinivas Madan Kumar
- 11. Manikyam Vijay
- 12. Kothavarapù Vasu

...Respondents.

'A' SCHEDULE FILED ON BEHALF OF THE PETITIONER.

Immovable property if any

----Nill

ADVOCATE FOR PETITIONER

PETITIONER.

I do hereby declare that the above stated facts are all true to the best of my knowledge, information and belief.

TENALI,

-2021.

PETITIONER.

I.P.NO. 56/2021.

Between:

Kaviyarasan Murugesan

... Petitioner.

And

- 1. Ganesh Ramesh
- 2. Muruge'san Manikanta
- 3. Krishna Kumar Vigneswaran
- 4. Tirumalasetti Srinivasa Rao
- 5. Chinka Vamsi
- 6. Suggana Prasanna Lakshmi
- 7. Suggana Krishna
- 8. Sethupathi Ilango
- 9. Palani Swami Prakash
- 10. Srinivas Madan Kumar
- 11. Manikyam Vijay
- 12. Kothavarapu Vasu

...Respondents.

'A' SCHEDULE FILED ON BEHALF OF THE PETITIONER.

Immovable property if any

----Nill

ADVOCATE FOR PETITIONER

PETITIO NER.

I do hereby declare that the above stated facts are all true to the be knowledge, information and belief.

TENALI,

-2021.

PETIT IONER.

Attached to decree

I.P.NO. /2021.

Between:

Kaviyarasan Murugesan

... Petitioner.

And

- 1. Ganesh Ramesh
- 2. Murugesan Manikanta
- 3. Krishna Kumar Vigneswaran
- 4. Tirumalasetti Srinivasa Rao
- 5. Chinka Vamsi
- 6. Suggana Prasanna Lakshmi
- 7. Suggana Krishna
- 8. Sethupathi Ilango
- 9. Palani Swami Prakash
- 10. Srinivas Madan Kumar
- 11. Manikyam Vijay
- 12. Kothavarapu Vasu

...Respondents.

'B' SCHEDULE FILED ON BEHALF OF THE PETITIONER...

Movable property if any

----Nill

ADVOCATE FOR PETITIONER

PETITIONER.

I do hereby declare that the above stated facts are all true to the best of my knowledge, information and belief.

TENALI.

-2021.

PETITIONER.

Attached to decree

I.P.NO. /2021.

Between:

Kaviyarasan Murugesan

... Petitioner.

And

- 1. Ganesh Ramesh
- 2. Murugesan Manikanta
- 3. Krishna Kumar Vigneswaran
- 4. Tirumalasetti Srinivasa Rao
- 5. Chinka Vamsi
- 6. Suggana Prasanna Lakshmi
- 7. Suggana Krishna
- 8. Sethupathi Ilango
- 9. Palani Swami Prakash
- 10. Srinivas Madan Kumar
- 11. Manikyam Vijay
- 12. Kothavarapu Vasu

...Respondents.

'C' SCHEDULE FILED ON BEHALF OF THE PLAINTIFF.

1. Shirts 2 in number rupees	100/-
2. Lungies 2 in number rupees	100/-
3 Taval two in number rupees	50/-
4. Blankets two in number rupees	150/-
5. Two old mats rupees	50/-
6. Two steel glasses and steel plates and	
house hold articles worth about Rs.	350/-
	750/-

ADVOCATE FOR PETITIONER

PETITIONER.

I do hereby declare that the above stated facts are all true to the best of my knowledge, information and belief.

TENALI,

-2021.

PETITIONER.

Adaded to decree

TENALI

I.P.NO. /2021.

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		. V			•

Kaviyarasan Murugesan

... Petitioner.

And

Ganesh Ramesh & 11 Others

...Respondents.

'D' SCHEDULE FILED ON BEHALF OF THE PETITIONER.

LIABILITIES.				
1. Debt to the 1 st respondent worth	Rs. 2,00,000/-			
Given 2 empty blank bank cheques				
2. Debt to the 2 nd respondent worth	Rs. 3,00,000/-			
Given 2 empty promissory notes & 2 blank bank cheques				
3. Debt to the 3 rd respondent worth	Rs. 2,00,000/-			
Given 1 empty promissory notes & 2 blank bank cheques				
4. Debt to the 4 th respondent worth	Rs. 5,00,000/-			
Given 3 empty promissory notes & 5 blank bank cheques & 1 N.J. Sta				
5. Debt to the 5 th respondent worth	Rs. 3,50,000/-			
Given 2 blank bank cheques				
6. Debt to the 6 th respondent worth	Rs. 3,00,000/-			
Given 1 empty promissory notes & 3 blank bank cheques				
7. Debt to the 7 th respondent worth	Rs. 1,70,000/-			
8. Debt to the 8 th respondent worth	Rs. 5,00,000/-			
Given 5 empty promissory notes & 5 blank bank cheques				
9. Debt to the 9 th respondent worth	Rs. 3,00,000/-			
Given 2 empty promissory notes & 3 blank bahk cheques				
10. Debt to the 10 th respondent worth	Rs. 6,00,000/-			
Given 3 empty promissory notes & 3 blank bank cheques				
11. Debt to the 11 th respondent worth	Rs. 2,00,000/-			
Given 1 empty promissory notes & 2 blank bank cheques				
12. Debt to the 12 th respondent worth	Rs. 5,00,000/-			
Given 3 empty promissory notes & 4 blank bank cheques				
T 4 11 1 11 1				
Total liabilities of the petitioner	Rs. 41,20,000/-			

ADVOCATE FOR PETITIONER

PETITIONER.

I do hereby declare that the above stated facts are all true to the best of my knowledge, information and belief.

TENALI.

-2021.

PETITIONER.

Attached to decree

I.P.NO.	56 1	2021.
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Between:

Kaviyarasan Murugesan

... Petitioner.

And

- 1. Ganesh Ramesh
- 2. Murugesan Manikanta
- 3. Krishna Kumar Vigneswaran
- 4. Tirumalasetti Srinivasa Rao
- 5. Chinka Vamsi
- 6. Suggana Prasanna Lakshmi
- 7. Suggana Krishna8. Sethupathi Ilango
- 9. Palani Swami Prakash
- 10. Srinivas Madan Kumar
- 11. Manikyam Vijay
- 12. Kothavarapu Vasu

...Respondents.

E'SCHEDULE FILED ON BEHALF OF THE PETITIONER.

Recoverable debts

-Nill

ADVOCATE FOR PETITIONER

PETITIONER.

I do hereby declare that the above stated facts are all true to the best of my knowledge, information and belief.

TENALI,

-2021.

PETITIONER.

Attached to deere

Present: Sri Marpu Sreedhar Addl.Senior Civil Judge, Tenali

Wednesday, this the 15th day of November, 2023

Insolvency Petition No. 76 of 2022

Between:

Munnangi Kotireddy S/o.Chinnapa Reddy, Hindu, aged about 43 years, R/o.Nandulapet, Tenali.

...Petitioner

And

- 1. Manukonda Subbareddy S/o.Not known, Hindu, aged about 49 years, Soda Business, Gadibavi Centre, Near Ramalayam, Tenali.
- 2. Nandrapati Chittibabu S/o.Gurvaiah, Hindu, aged about 50 years, Business, R/o.D.No.10-90-15, Indiranagar Colony, Chenchupet, Tenali, Tenali JCJC.
- 3. Simham Adilakhsmi W/o.Anjaiah, Hindu, aged about 47 years, Housewife, r/o.D.No. 14-69-105, Near Chandrababu Naidu Colony, Kobbari Thota, Morrispet, Tenali, Tenali JCJC.
- 4. Myla Tirumala W/o.Sambasiva Rao, Hindu, aged about 38 years, Sarees and Cloth Business, R/o.H.No.13-7-9, Gopidesi vari Street, Pinapadu, Tenali.Respondents

This Insolvency Petition is coming on 09.11.2023 before me for hearing in the presence of Sri R.Subba Rao, Advocate for Petitioner and Respondents 1 to 4 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following:

::ORDER::

- 1. This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner is as an insolvent; to administer the assets of the petitioner under the provisions of the Provincial Insolvency Act; to grant interim protection to the petitioner from being arrested in any proceedings; costs and to pass such other necessary reliefs.
- 2. The case of the petitioner in a nutshell is as follows:

The petitioner used to do fruits retail business in Tenali town since 20 years. During the year 2020 because of lock down, he could not continue his business and consequently experienced severe hardship for his sustenance. The petitioner compelled to borrow here and there and he could not repay the same as there was no business continuously for several months. The respondents 1 and 2 are running private chits and the petitioner is one of the subscribers of the chits. The petitioner

has therefore bid the chit so as to raise fund for running his business as well as to discharge his debts he raised. At the time of making payment of the chit amounts, the 1st respondent obtained the signatures of the petitioner on unfilled promissory notes and unfilled cheque as security from the petitioner. Subsequently the petitioner paid some amounts except a few. Thus the unfilled promissory notes and cheque still remained with 1st respondent. The 1st respondent is threatening the petitioner saying that he would kidnap the children of the petitioner if the petitioner fails to pay the amounts as demanded by him. The petitioner sustained heavy loss and he is unable to discharge the debts due to the respondents. Even in the said circumstances also, the petitioner paid some amounts to the respondents towards interest and he lost all the investment and he became dependent person and is unable to pay the debts due to the respondents completely. The respondents are also threatening the petitioner with dire consequences for discharging their debts. At present the petitioner has no avocation and he is not able to do the business any more and he has no money to start any business. Petitioner has no movable or immovable properties except mentioned in the schedule and his liabilities are far exceed his assets and he has no capacity to discharge his debts. Hence, this petition is filed.

- 3. The respondents 1 to 4 remained exparte to this proceedings though they received notice from this Court.
- 4. On behalf of the petitioner, petitioner was examined as PW1 and no documents were admitted through him.
- 5. Heard petitioner's counsel. Perused the material available on record.
- 6. Now the point for determination is:

Whether the petitioner can be adjudicated and to declare as an insolvent as prayed for?

7. POINT:

- I) Sec.10 of the Provincial Insolvency Act specifies the conditions on which the debtor may present petition. A debtor shall be entitled to present in Insolvency Petition only:-
 - 1. When he is unable to pay his debts; or
 - 2. When his debts are more than his assets; or
 - 3. When he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or
- 4. When an order of attachment in execution of such a decree has been made, and is subsisting against his property.
- ii) The case of the petitioner is that he did fruits business and because of

lockdown he could not continue his business and to improve his chit business, the petitioner borrowed several amounts from respondents as hand loans by executing pronotes on higher rate of interest. It is the further case of the petitioner is that he paid some of the interest amount, but failed to pay complete debts and he sustained huge loss due to Covid-19 pandemic. It is also an admitted fact that there is no whisper in the pleadings and evidences about the quantum of loss sustained to him. However, facts which are pleaded and averred by the petitioner that he sustained loss in the business due to lock down in the year 2020 was remained unchallenged due to non-filing of counter and in view of non-cross examination of PW1.

- Iii) In fact, there is no whisper in his evidence about the quantum of amounts borrowed from the respondents by way of pleadings though he got mentioned in A schedule as Rs.8,25,000/-. However, the unchallenged evidence adduced by the PW1, the schedule given by petitioner A- schedule shows they became due of Rs.8,25,000/- to respondents 1 to 4 whereas C-schedule shows they are having wearing apparels and utensils worth of Rs.900/- only. Therefore, the unchallenged evidence of PW1 and the pleadings of the petitioner coupled with schedule given by him clearly shows they became due to the respondents to the tune of Rs.8,25,000/- and he is not in a position to discharge the said debts. The respondents also did not raise any objections with regard to any aspects which are pleaded in the petition and evidence placed by him. Hence, he is entitled to declare as an insolvent, consequently, this point is to be allowed.
- 8. In the result, the petition is allowed without costs and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months. The properties of the petitioner are vested with the Official Receiver, if any. Office is directed to communicate a copy of this order to the Official Receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by the Personal Assistant, corrected and pronounced by me in open Court, this the 15th day of November, 2023.)

Sd/-,Additional Senior Civil Judge,
Tenali.

Appendix of Evidence Witnesses Examined

For Petitioner:

For Respondents:

P.W.1- Munnangi Koti Reddy

- Exparte -

Exhibits Marked

For Petitioner:

Nil

For Respondents:

Nil

Sd/-,

Additional Senior Civil Judge,

Tenali.

Copy to:

1. The Official Receiver, Guntur

2. The District Collector, Guntur.

*

ON SENIOR CIVIL DUDGE

Preșent: Sri Marupu Sreedhar Addl.Senior Civil Judge, Tenali

Wednesday, this the 15th day of November, 2023

Insolvency Petition No. 76 of 2022

Between:

Munnangi Kotireddy S/o.Chinnapa Reddy, Hindu, aged about 43 years, R/o.Nandulapet, Tenali.

...Petitioner

And

- 1. Manukonda Subbareddy S/o.Not known, Hindu, aged about 49 years, Soda Business, Gadibavi Centre, Near Ramalayam, Tenali.
- 2. Nandrapati Chittibabu S/o.Gurvaiah, Hindu, aged about 50 years, Business, R/o.D.No.10-90-15, Indiranagar Colony, Chenchupet, Tenali, Tenali JCJC.
- 3. Simham Adilakhsmi W/o.Anjaiah, Hindu, aged about 47 years, Housewife, r/o.D.No. 14-69-105, Near Chandrababu Naidu Colony, Kobbari Thota, Morrispet, Tenali, Tenali JCJC.
- 4. Myla Tirumala W/o.Sambasiva Rao, Hindu, aged about 38 years, Sarees and Cloth Business, R/o.H.No.13-7-9, Gopidesi vari Street, Pinapadu, Tenali.

...Respondents

This insolvency petition is filed under Section 10 of Provincial Insolvency Act, 1920 to adjudicate the petitioner is as an insolvent; to administer the assets of the petitioner under the provisions of the Provincial Insolvency Act; to grant interim protection to the petitioner from being arrested in any proceedings; costs and to pass such other necessary reliefs.

Petition presented on: 27.09.2022 Petition filed on:19.10.2022

Cause of action for the petition arose when the petitioner did business in fruits since 20 years; when the petitioner borrowed amounts on pronotes and chits; when the creditors of the petitioner obtained empty pronotes, empty cheques by force; when the petitioner incurred heavy loss when the respondents are threatening the petitioner with dire consequences; when the petitioner is not having any movable or immovable properties when the assets of the petitioner are far exceed than his liabilities; when the petitioner is unable to discharge his dues; and at Tenali where the petitioner is residing within the jurisdiction of this Court.

Valuation of this petition is filed U/s.10 of Provincial Insolvency Act to adjudicate and declare the petitioner as insolvent, a fixed Court fee of Rs.10/- is herewith paid U/s.1 Art.II (ii) of A.P.C.F & S.V Act.

This Insolvency Petition is coming on 09.11.2023 before me for hearing in the presence of Sri R.Subba Rao, Advocate for Petitioner and Respondents 1 to 4 remained set exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made do th order and decree as follows:

- i) That the petition be and the same is hereby allowed and the petitioner is adjudicated as insolvent and he shall apply for discharge within six months.
- ii) that the properties of the petitioner are vested with the Official Receiver, if any.
- Iii) that the Office is directed to communicate a copy of this order to the Official Receiver.
- iv) that the Office is directed to communicate a copy of this order for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.
- v) that the parties do bear their own costs.

Given under my hand and the seal of the Court, this the 15^{th} day of November, 2023.

Sd/-,Additional Senior Civil Judge,
Tenali.

Table of Costs
"No CM & FC filed on either side."

NB:-Copies of schedule hereto attached.

Sd/-,Additional Senior Civil Judge,
Tenali.

[Dis No.877.

TEHAL

IN THE COURT OF THE HONOURABLE ADDITIONAL SENIOR CIVIL JUDGE'S COURT

TENALI

I.P.No. of /2022

Between:

Munnangi Kotireddy

- Peti'ioner

.And

Manukonda Subba Reddy and others

-Respondents

'A' SCHEDULE FILED ON BEHALF OF THE PETITIONER

(Liabilities)

1. Manukonda Subba Reddy - Rs. 3,25,000-00

2. Nandrapati Chitti Babu - Rs. 1,50,000-00

3.Simham Adilakshmi - Rs. 2,00,000-00

4. Myla Tirumala - Rs. 1,50,000-00

Total - Rs. 8,25,000-00

Advocate for petitioner

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 27-09-2022

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Attached to decree

IN THE COURT OF THE HONOURABLE ADDITIONAL SENIOR CIVIL JUDGE'S COURT

TENALI

I.P.No. /2022

Between:

Munnangi Kotireddy

- Petitioner

And '

1. Manukonda Subba Reddy & others

- Respondents

'B' SCHEDULE FILED ON BEHALF OF THE PETITIONER

(Immovable properties)

-NIL-

Advocate for petitioner

Petitioner

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odvo 18.51603.2.

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 27'-09-2022

Petitioner

Attached to

IN THE COURT OF THE HONOURABLE ADDITIONAL SENIOR **CIVIL JUDGE'S COURT**

TENALI

I.P.No. 76/2022

Between:

Munnangi Kotireddy

- Petitioner

And

Manukonda Subba Reddy & others

-respondents

'C' SCHEDULE FILED ON BEHALF OF THE PETITIONER

(Movable properties)

2 pairs of pants

- Rs.500-00

2 pairs of shirts

-Rs. 200-00

Towel and underwears

- Rs.100-00

Plate, tumbler

- Rs.100-00

Rs.900-00

Advocate for petitioner

and 08:51 4:86

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 27-09-2022

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Attached to deorce

IN THE COURT OF THE HONOURABLE ADDITIONAL SENIOR CIVIL JUDGE'S COURT

TENALI

1.P.No. 36/2022

Leivuent

Munnangi Kotireddy

- Petitione:

And

- 1. Manukonda Subba Reddy
- 2. Nandrapati Chitti Babu
- 3.Simham Adilakshmi

a. Myla Tirumala

- Responding

'D' SCHEDULE FILED ON BEHALF OF THE PETERSON WILL

(OUTSTANDINGS)

-NIL-

Advocate for petitioner

olije og 1.51 to 5 &

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 27 -09-2022

12)0 8-5 60 BE

Petitioner

Attached to desig

IN THE COURT OF THE HONOURABLE ADDITIONAL SENIOR **CIVIL JUDGE'S COURT**

TENALI

uctivecii.	
Myla	Tirumala

- Pelitioner

And

Kode Venkateswara Rao and others

- Respondents

'F' SCHEDULE FILED ON HEHALF OF THE PITCH CHAIR

(Aba'ract)

'A' schedule liabilities

Rs. 8,25,800-00

"B" schedule immovables -NIL

"C' schedule movables -- Rs.900-00

"D' schedule outstandings -NII.

900-00 Rs. 8,25,000-00

900-00

Deficit - Rs.8,24,100-00

Advocate for petitioner

I do hereby declare that the facts stated above are true to the best of my knowledge, information and belief.

Tenali,

Dt. 27-09-2022

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Saturday, the 21st day of October, 2023

INSOLVENCY PETITION NO.26/2022

Between:

Sri Ganesh Traders rep. By its Proprietor Uppu Sai Eeswari, W/o.Satyanarayana, 31 yrs., Hindu, R/o.Doo No.25-16-277, MD Nagar, Guntur.

...PETITIONER.

AND

- 1. Subham Genarl Merchants rep. By its Proprietor Sanjeeva Reddy, having its resident at Door No.24-2-79, Rama Chandra Nilayam, Opp. Syndicate Bank, Chaparala Vari treet, Guntur.
- 2. Siva Chillies Agency rep. By Pro.Ch.Srinivasa Rao, having its resident at Door No.24-2-83, Sri Sai Geetha Complex, 2nd Floor, Chaparala Vari Street, Guntur.
- 3. Lending Kart Finance Ltd., rep. By its Branch Manager, regd. office B-Block, 6th floor, the First Avenue Road, Behind Keshava Baug Party Plot, Vastrpur, Ahmedabad.
- 4. The Official Receiver, District Court, Guntur.

...RESPONDENTS.

This petition coming on 14.9.2023 for final hearing before me in the presence of Sri R.Sivaji, Advocate for petitioner and R1 & R2 remained exparte, and petition against R3 was dismissed, and R4 representing the Official Receiver, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
- 2. The main case of the petitioner, in brief, is that,
 - i) she used to run a chilli business in the name and style of Sri Ganesh Traders from 9.4.2018. She used to get chillies from concerned agents. In the course of getting chillies from agents, she used to issue receipts and blank cheques. Further, she availed of loans from various financial institutions, other chilli agents and respondents. She used to

pay amounts for material purchased by her, upto Covid pandemic. The Covid pandemic condition affected her entire business.

- ii) Taking advantage of her business and financial needs, her creditors demanded for issuing blank receipts, cheques and letterheads containing her signatures. Further, they collected a higher rate of interest, which ultimately resulted in driving her business into the doldrums. She sustained a huge loss in the business. On the other hand, her creditors started hunting and harassing her, taking advantage of blank signed receipts, cheques and letterheads. Further, they threatened her with legal consequences, including the threat of physical violence.
- iii) As her business went into doldrums and having no other go, except to wind up her business, due to an unforseen pandemic situation, lockdown, and lack of funds. Ultimately, she closed the business.
- iv) Liabilities of petitioners payable to respondents are shown in petition A-schedule, while showing her property B1 to B5 schedule. Her liabilities exceeded her assets, and she is not in a position to discharge the debts. She is living on the mercy of her friends and relatives. But respondents threatened her with dire consequences with a demand to discharge debts. As there is no possibility for discharging debts, she filed this present insolvency petition to adjudge her as insolvent.
- 3. On service of notices, respondents 1 and 2 appeared through their counsel. Subsequently, they failed to file a counter, though ample time was given. As such, they were set exparte. This petition is dismissed against the third respondent, as no process is filed.

4. Now the point for determination is:-

Whether the petitioner is entitled to be adjudged as insolvent as prayed for?"

- 5. During course of enquiry, the petitioner himself examined as P.W.1. No documents are marked on his behalf. On the other hand, respondents did not adduce either oral or documentary evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

- 8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:
 - Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."
- 9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:
 - (a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.
- 13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another² , the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

^{1 2002 (3)} ALD 456

^{2 2014 (3)} ALT 602

- 15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that, the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.
- In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

- 17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor.
- 18. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties and, thereby, she was unable to pay debts, she relied on his testimony. He examined herself as P.W.1. She reiterated the averments of the petition in her chief examination affidavit. Respondents failed to cross-examine her. Thus, her chief examination became unchallenged.
- 19. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But she furnished particulars of debts, i.e., quantum of debt, nature of debt, and

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.

20. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

SI.N o.	Name of the Creditor	Amount due	Nature of debt
1.	Subham General Merchants rep. By its Proprietor	Rs.3,49,786/-	Supply of chillies
2.	Siva Chillies Agency rep. By Pro.	Rs.2,38,365/-	Supply of chillies
3.	Lending Kart Finance Ltd., rep. By its Branch Manager	Rs.8,70,000/-	Loan
	Total	Rs.14,58,151/-	

- 21. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 14,58,151/-. Now the question is: whether his debts exceed her properties?
- The petitioner showed her properties in petition 'B' schedule property. As seen from the petition B schedule, immovable property, outstandings, and cash on hand (B1, B3 & B4 of schedules) are shown as nil. Further, she showed her balance amount in the four bank accounts in petition B2 schedule as Rs. 65,352/-, while showing wearing apparel and cooking vessels in B5 schedule as they worth about Rs. 3,000/-.
- Thus, it is clear from the petition 'A' and 'B' schedule properties that the debts and liabilities of the petitioner are greater than her property. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.

- In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.
- 25. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge. All her properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 21^{st} day of October, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

PW1 Uppu Sai Eeswari.

For Respondents: NIL.

DOCUMENTS MARKED

NIL.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

11 True COPY 1

[Dis No.70.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Thursday, the 23rd day of November, 2023

INSOLVENCY PETITION NO.90/2022

Between:

Shaik Imamsa, S/o Salam, Muslim, Aged about 47 years, R/o D.No.8-27-24, BTR Nagar, 1st lane, Kakani Raod, Guntur.

...PETITIONER.

AND

- 1. Shaik Subhani, S/o Peerbuda, Muslim, Aged about 46 yeas, R/o D.No.15-3-4, Kondaveedu Village, Edlapadu Mandal, Guntur District.
- 2. M/s. Shri Ram Transport Finance Company Ltd., rep. by its Authorised Signatory #5-87-37/4, 2nd Floor, Lakshmipuram, Main Road, 4/1 Shankarvilas, Guntur.
- 3. Mohammed Ali, S/o Khasim Saheb, Muslim, Aged about 39 years, R/o D.No.16-7-28/2, Kondaveedu Village, Edlapadu Mandal, Guntur District.
- 4. Shaik Gansaida, S/o Chinakaleeshavali Muslim, Aged about42 years, R/o D.No.10-40-48, Bose Bazar, Perecherla Village, Medikonduru mandal, Guntur District.
- 5. Shaik Shabeer, S/o Khasim, Muslim, Aged about 38 yers, Business, R/o D.No.12/108, Medikonduru village & Mandal, Guntur District.
- 6. M. Sambasiva Rao, S/o not known to Petitioner, Hindu, aged about 65 years, R/o D.No.2-12, Nimmagaddavari Palem, Prathipadu Mandal, Guntur District.
- 7. P. Suresh Babu, S/o Yehalu, Hindu, aged about 39 years, R/o D.No.9-4-125B, Takkellapadu Post, Pedakakani Mandal, Guntur District.
- 8. Kanneganti Sambasiva Rao, S/o Subba Rao, Hindu, aged about 49 years, R/o D.No.24-149/4, Vejendla village, Chebrolu Mandal, Guntur District.
- 9. Yennamreddy Ankireddy, S/o Sambireddy, Hindu, aged about 42 years, r/o D.No.24-149/4, Vejendla Village, Chebbrolu Mandal, Guntur District.
- 10. Official Receiver, District Court Campus, Guntur.

...RESPONDENTS.

This petition coming on 27.9.2023 for final hearing before me in the presence of Sri M. Chowdary Rao, Advocate for petitioner and R1 to R4 and R 7 to 9 remained exparte, petition against R5 and R6 was dismissed; and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
- 2. The main case of the petitioner, in brief, is that,
 - i) initially, he used to do the Lorry Sale business. In the course of business, he used to purchase old lorries and get them repaired, and sell them at a higher price. Initially, the lorry sale business was being run in a good manner, and as such, he used to purchase 4 or 5 lorries at a time by borrowing amounts from others. Later, he used to get it repaired and sell it to others. In that process, he spent huge amounts on purchasing lorries. Prior to the National Lockdown, he purchased 4 lorries and kept them in a mechanic shed. But due to lockdown, no one went there, and as such, major parts of lorry were misplaced. After lifting the lorry, when he observed lorry parts were not there, and thereby, he incurred a huge loss in the truck business.
 - ii) Later, he entered the Real Estate business. In the course of business, he used to purchase the properties under agreements by paying advance amounts and sell them at higher prices. Initially, his business flourished. But due to the Carona pandemic and the change of government, the real estate business totally collapsed. Therefore, he was unable to sell the properties within the stipulated period under the agreements. He caused further losses.
 - iii) In view of the loss, he is also unable to pay interest. For several days, the petitioner has taken some amounts from some of the respondents. But day by day, his financial situation got worse, and at present, he is totally bankrupt.

- iv) For the purpose of business, he borrowed several amounts from some of the respondents and paid huge interest to them by borrowing amounts from some of the respondents. Taking advantage of his financial crisis, some of the creditors, with the help of anti-social elements, forcibly trespassed into his house, took away the remaining material as per their wishes, and also obtained promissory notes, and cheques and other accessories. He is not in a position to pay debts. Some of the respondents are trying to lodge complaints against him before several police stations to harass and threaten him.
- v) He suffered losses and had to borrow several amounts from respondents 1 to 9 to do the business. His liabilities exceed his assets. Hence, he urged the court to adjudge him as insolvent.
- 3. On service of notices, respondents 1 to 4, 7 to 9, did not appear before the court either personally or through their counsel. As such, they were set exparte. I.P. was dismissed against respondents 5 and 6, as process is not paid.

4. Now the point for determination is:-

Whether the petitioner is entitled to be declared as an insolvent as prayed for?"

- 5. During course of enquiry, the petitioner himself examined as P.W.1 and documents are marked on his behalf. On the other hand, respondents did not adduce either oral or documentary evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the

Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

- Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."
- 9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:
 - (a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

- Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."
- 11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as

insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.

13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another² , the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that, even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie

^{1 2002 (3)} ALD 456

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

- 17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor.
- 18. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties and, thereby, he was unable to pay debts, he relied on his testimony. He examined himself as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. Respondents failed to cross-examine him. Thus, his chief examination became unchallenged.
- 19. In order to prove debts, except self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But he furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.
- 20. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

SI.N o.	Name of the Creditor	Amount due	Nature of debt Rs.
1.	Shaik Subhani	Pronotes	Rs.3,00,000-00
2.	M/s. Shri Ram Transport Finance Company Ltd.	Stamp papers	Rs.3,00,000-00
3.	M/s. Shri Ram Transport Finance Company Ltd.	Pronotes	Rs. 2,00,000-00

4.	Mohammed Ali	Pronotes	Rs.2,50,000-00
5.	Shaik Gansaida	Pronotes	Rs.3,50,000-00
6.	Shaik Shabeer	Pronotes	Rs.2,00,000-00
7.	M. Sambasiva Rao	Pronotes	Rs.3,00,000-00
8.	P. Suresh babu	Pronotes	Rs.3,00,000-00
9.	Kanneganti Sambasiva Rao	Pronotes	Rs.3,00,000-00
10.	Yennamreddy Ankireddy	Pronotes	Rs.5,00,000-00
	Total		30,00,000-00

- 21. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 30,00,000/-. Now the question is: whether his debts exceed his properties?
- 22. The petitioner showed his properties in petition 'B' schedule property. As seen from the petition B schedule immovable property, bank deposits, outstanding dues to the petitioner, cash on hand, and movables (B1 to B5) are shown as nil. But he showed wearing apparel in the B Schedule worth Rs. 600/-. On the other hand, respondents did not dispute the assets shown by the petitioner.
- 23. It is an important and significant aspect that needs to be mentioned here that the second respondent is a private finance company. Its nature and status are not disputed by the petitioner also. Now the question before the court is, whether an insolvency petition is maintainable against companies or corporations, like the second respondent.
- 24. Sec. 8 of the Act would answer the above question. It deals with the exemption of corporations, etc., from insolvency proceedings. It is worthwhile to reproduce the provision hereunder:

- "8. Exemption of corporation, etc. from insolvency proceedings:- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."
- 25. A plain reading of the above provision makes it manifests that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. In Indian Overseas Bank Vs. Popuri Veeraiah and another⁵, Hon'ble Composite High Court held at Para No.11 as follows:
 - On a bare reading of the above Section, it is quite apparent 11. that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions. of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.
- 26. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies/corporate is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, the second respondent is a company. In view of the

²⁰⁰⁹⁽⁴⁾ ALT 365

above provision and authority, the present insolvency petition is not maintainable against the second respondent.

- 27. Let me examine the case of petitioner to see whether his liabilities exceeded his properties, even after excluding the debts of second respondent? As per B schedule, property of petitioner is Rs. 600/-, while his dues is, Rs. 25,00,000/- [30,00,000- 5,00,000 (3,00,000+ 2,00,000)] after excluding the debts of second respondent.
- 28. It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.
- 29. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.
- 30. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge, while dismissing the petition against second respondent. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 23rd day of November, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

:Velpuri Bhavani Devi

For Respondents: None.

DOCUMENTS MARKED

For Petitioner:

Ex.P1: Copy of Aadhar card of petitioner (Compared with original)

Ex.P2: Agent identify card issued by Agri Gold Company.

For Respondents:

-Nil-

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge, Guntur.

// True copy//

GUNTUR.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Saturday, the 21st day of October, 2023

INSOLVENCY PETITION NO.62/2021

Between:

Shaik Jani Basha, S/o.Lhaja, 39 yrs., Old Wood Business, R/o.D.No.16-27-112, $\mathbf{1}^{\text{st}}$ lane, Magdum Nagar, Old Guntur, Guntur.

...PETITIONER.

AND

- 1. Shaik Baji, S/o.Babu, 35 yrs., Wood Business, R/o.D.No.19-7-432, 4th lane, Sangadigunta, Guntur.
- 2. J.Veeraiah, S/o.Rao, 50 yrs., Business, R/o.D.No.68-12-95/1, $19^{\rm th}$ ward, $3^{\rm rd}$ lane, LR Colony, Guntur.
- 3. Shaik Dariya, S/o.Masthan, 48 yrs., Chicke Stall, R/o.D.No.4-32/E2, Lam Village, Tadikonda Mandal, Guntur District.
- Shaik Noor Jaha @ Aunty, W/o.Abdul Rehaman, 36 yrs., YSRCP Leader, R/o.D.No.3-174, Lam Village, Tadikonda Mandal, Guntur District.
- 5. Shaik Jubeer Hazarath, S/o.Noor Ahamad, 50 yrs., Worl in Maszid, R/o.D.No.4-31C, Lam Village, Tadikonda Mandal, Guntur District.
- 6. Pathan Sabiha, W/o.Late Ibrahim, 45 yrs., Kirana Stores, R/o.D.No.3-9-68, Lam Village, Tadikonda Mandal, Guntur District.
- 7. Aye Finance Limited, R/o.D.No.31-14-1206, 2nd floor, 14/2, Arundelpet, Guntur.
- 8. IDFC First Bank Ltd., 1st floor, West Krishna Plaza, Lakshmipuram, Chandramoulingar, Main Road, Guntur.
- 9. HDB Finance Ltd., R/o.D.No.5-87-7, 2nd floor, Above Reliance Super City Centre, Lakshmipuram, Guntur.
- 10. The Official Receiver, District Court Complex, Nagarampalem, Guntur.

...RESPONDENTS.

This petition coming on 17.10.2023 for final hearing before me in the presence of Sri Sayed Bajee Bala, Advocate for petitioner and R1 to R9 remained exparte, and R10 representing the Official Receiver, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.

- 2. The main case of the petitioner, in brief, is that,
 - I) He used to do wood business. In the course of business he used to purchase second hand wood from the owners and with the said wood he used to make furniture and sell to the needy people. He ran the business successfully for short period. For developing his business, he used to borrow amounts of higher rates of interest by giving blank signed promissory notes, cheques and empty signed NJ stamps at the instance of respondents 1 to 9. Among the respondents, respondents 7 to 9 are non-banking financial institutions.
 - The petitioner paid hard earning money to the respondents even ii) then also he became defaulter of payment of debts. In view of the lack of experience in the business, due to heavy competition and in of the lock down, he was unable to run business properly. However, his purchased wood was totally damaged due to which he sustained heavy loss in the business and unable to continue his business due to lack of money. As such he stopped his business. Now he is not in a position to eakout his livelihood due to no avocation. He is suffering with several aliments. He is unable to provide minimum needs to his family members as well. Respondents threatened him with dire consequences and he and his family members are apprehending danger in the hands Further the respondents are pressurizing him like of respondents. anything for demand of dues. All of them are adopting variable and violent memo against him for recovery of money. In fact, except immovables shows in B5-schedule, he has no other property to discharge debt. His liabilities exceeded his properties. Hence, he filed this present petition to adjudge him as insolvent.

- 3. On service of notices, respondents 1 to 9 did not appear before the court either personally or through their counsel. As such, they were set exparte.
- 4. Now the point for determination is:-

Whether the petitioner is entitled to be declared as an insolvent as prayed for?"

- 5. During course of enquiry, the petitioner himself examined as P.W.1. No documents are marked on his behalf. On the other hand, respondents did not adduce either oral or documentary evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

- 8. This petition was filed under Section 10 of the Act. So, it is apropos to go through the prerequisites laid down under Section 10 of the Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:
 - Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts.".
- 9. The very beginning words of section 10(1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

11. When I.P. filed by the debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 12. On a combined reading of Sections 10, 24 and 25(2), it is abundantly clear that the petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him as an insolvent.
- 13. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another² , the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

- 15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that, the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.
- 16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec.10 and Sec.24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

- 17. On the touchstone of the above legal principles, this Court now proceeds to test the case of the petitioner/debtor.
- 18. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties and, thereby, he was unable to pay debts, he relied on his testimony. He examined himself as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. Respondents failed to cross-examine him. Thus, his chief examination became unchallenged.

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

- 19. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But, he furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.
- 20. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

SI.No	Name of the Creditor	Amount due	Nature of debt	
1.	Shaik Baji	Rs.1,00,000/-	Empty singed pronotes-2 Empty singed cheques-2	
2.	J.Veeraiah	Rs.1,00,000/-	Empty singed pronotes - 2 Empty singed cheques -2	
3.	Shaik Dariya	Rs.1,50,000/-	Empty singed pronotes -2 Empty signed cheques -2	
4.	Shaik Nagoor Jaha @ Aunty	Rs.1,75,000/-	Empty singed pronotes -2 Empty singed cheques -2	
5.	Shaik Zubeer Hazarath	Rs.2,25,000/-	Empty singed pronotes - 2 Empty signed cheques -2	
6.	Pathan Sabiha	Rs.1,50,000/-	Empty signed pronotes -2 Empty signed cheques -2	
7.	Aye Finance Ltd.,	Rs.2,00,000/-	Empty singed pronotes -2 Empty singed cheques -2 Empty singed Non-Judl.stamp paper	
8.	IDFC First Bank Ltd.,	Rs.2,80,000/-	Empty singed pronotes -2 Empty singed cheques- 2 Empty singed Non Jdul. Stamp paper	
9.	HDB Finance Ltd.,	Rs.1,50,000/-	Empty singed pronotes -2 Empty singed cheques- 2 Empty singed Non Jdul. Stamp paper	
,	Total	Rs.15,30,000/-		

- 21. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 15,30,000/-. Now the question is, whether his debts exceed his properties?
- 22. The petitioner showed his properties in petition 'B' schedule property. As seen from the petition B schedule, immovable property, debts, securities, cash on hand (B1 to B4) are shown as nil. But he showed his movables in the B5 schedule as worth about Rs. 5000.
- 23. It is important and significant aspect which needs to be mentioned here that respondents 7 to 9 are private finance Companies. Its nature and status are not disputed by the petitioner also. Now the question before the court is whether an insolvency petition is maintainable against companies or corporations, like respondents 7 to 9.
- 24. Sec. 8 of the Act would answer the above question. It deals with the exemption of corporation etc., from insolvency proceedings. It is worthwhile to reproduce the provision hereunder:
 - **"8. Exemption of corporation, etc. from insolvency proceedings:** No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."
- 25. A plain reading of the above provision makes it manifest that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. In Indian Overseas Bank Vs. Popuri Veeraiah and another⁵, Hon'ble Composite High Court held at Para No.11 as follows:
 - 11. On a bare reading of the above Section, it is quite apparent that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded

^{5 2009(4)} ALT 365

against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions. of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.

- 26. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies/corporate is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, respondents 7 to 9 is a company. In view of the above provision and authority, the present insolvency petition is not maintainable against respondents 7 to 9.
- 27. Let me examine the case of petitioner, whether his liabilities exceeded his properties, even after excluding debts of respondents 7 to 9? As per B schedule, property of petitioner is Rs. 5,000/-, while his dues is, Rs. 9,00,000/- (15,30,000-9,30,000/-) after excluding debts of respondents 7 to 9.
- 28. Thus, it is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.

- 29. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.
- 30. In the result, the petition is allowed by adjudging the petitioner as insolvent by giving six months time to discharge, while dismissing the petition against respondents 7 to 9. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 21st day of October, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

PW1: Shaik Jani Basha.

For Respondents: NIL.

DOCUMENTS MARKED

NIL.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

//True copy//

I A.S.C.J.,

GUNTUR.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Friday, the 15th day of December, 2023

INSOLVENCY PETITION NO.16/2021

Between:

Harimanikayam Chandra Babu, S/o Venkateswara Rao, Hindu, Aged about 34 years, Unemployed, R/o D.No.16-27-148/b, 1st Lane, Surya Nagar, Kothapeta, Old Guntur, Gutnur.

...PETITIONER.

AND

- 1. Bandaru Sanyasa Rao, S/o Narayana, Hindu, aged about 56 years, R/o D.No.1/68/A, $1^{\rm st}$ Lane, Gauthami Nagar, Koretipadu, Guntur.
- 2. Pallapatti Ravindra Babu, S/o Ganga Rao, Aged 28 years, Hindu, R/o Kambampadu Village, Peddakurapadu mandal, Guntur District.
- 3. Yetukuri Rama Rao, S/o Koteswara Rao, Hindu, aged about 44 years, R/o Door No.2-14/117/28,Flat No.60 Opposite Park, 8th Lane, Shyamala Nagar, Guntur.
- 4. Patti Madhuvarun, S/o Anjaneyulu, Hindu, aged about 27 years, R/o Door No.10-34-4, Chenchupeta, Tenali, Guntur District.
- 5. The Authorized Authority Axis Bank Ltd., D.No.59 A, Ground Floor, Matha Tower, Ring Road, Near Benz Circle, Vijayawada (Struck off)
 (Petition against 5TH Respondent is struck off as per orders in I.A.No.418/2023)
- 6. Tellamekkala Srinivasa Rao, S/o Veeraswamy, Hindu, aged about 45 years, R/o Flat No.20, Rama Buildings, amaravathi Road, Guntur.
- 7. The Official Receiver, District court Complex, Guntur.

...RESPONDENTS

This petition coming before me on 11.12.2023 for final hearing in the presence of Sri K.A.Wilson, Advocate for petitioner and Sri J.Venkateswara Prasad, Advocate for 5th respondent; and respondents 1 to 4 and 6 are remained exparte; and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This petition filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to declare the petitioner as insolvent.
- 2. The main case of petitioner, in brief, is that,
 - i) he is a law-abiding citizen and a honest person. He used to work in Sri Chaitanya Educational Institutions in Guntur, as a junior assistant since 2012. He used to draw a monthly salary of Rs. 15,000/. His father was an auto driver, and he lost his auto earnings due to Covid-19 and became ill. Thus, the petitioner became the sole breadwinner of his entire family. He spent a huge amount for the treatment of his father and paid interest for respondents up to April 2021.
 - He borrowed money from respondents with monthly interest at 24% PA. While lending the amount, respondents obtained blank signed promissory notes, cheques, papers and non-judicial stamp papers from him for security purposes. In that course, first respondent obtained 2 blank singed promissory notes and two cheuqes of Axis Bank; second respondent obtained one signed blank promissory note along with two signed N.J. Stamp worth Rs.100/- each, one blank singed cheque of Axis Bank; third respondent obtained two blank singed promissory notes, two cheques of Axis Bank; fourth respondent obtained two blank signed promissory notes, two signed N.J. stamps worth of Rs.100/-, each, two blank singed cheques of Axis Bank; fifth respondent obtained 16 blank signed promissory notes along with five blank signed N.J. stamps worth of Rs.100/-, each, 16 blank signed cheques of Axis Bank and sixth respondent obtained two blank signed promissory notes, two signed N.J. Stamps worth of Rs.100/- each, two blank signed unfilled cheques of Axis Bank.

- iii) The petitioner paid monthly interest till April 2020. In view of the unforeseen situations, he lost his job, which is the only source of his income. Thereby, he could not make payments to his debtors. Thus, the petitioner incurred a heavy financial burden. Though he discharged the major portion of the debts of respondents by borrowing money at a higher rate of interest from his friends and family members, they demanded to pay additional money at a higher rate of interest.
- iv) The fifth respondent started to harass the petitioner and his family members without following the guidelines of the Government. He requested the respondents to give some more time to discharge their debts and also assured them that he would discharge their debts. But they did not heed his words and started to threaten him that they would file criminal cases against the petitioner by misusing the above documents. Apart from that, on 28.2.2021, respondents colluded together and high-handedly obtained his signatures on some more blank promissory notes.
- v) Though the situation of petitioner is fully known to the respondents, they started pressure against him to discharge the debts. Some of the respondents went to the extent of threatening him, saying that they would kill him if their debts were not discharged. In view of Covid-19 pandemic, he is not in a position to resist the high-handed and illegal activities of the respondents.
- vi) Due to the financial difficulty incurred by the petitioner and as he has no income nor any work, he is depending on his friends and relatives for his day-to-day livelihood. He is not in a position to discharge the debts or to look after his father and other family

members. His liabilities exceed his assets. Hence, he urged the court to adjudicate him as insolvent.

- 3. On the other hand, respondents 1 to 4 and 6 remained exparte. This petitioner against fifth respondent is struck off as orders in I.A.No. 418/2023.
- 4. Now the point for determination is:-

"Whether the petitioner is entitled to be adjudged as insolvent as prayed for?"

- 5. During course of enquiry, petitioner examined himself as P.W.1. He reiterated the averments of petition in his chief examination affidavit. No document is marked. Respondents did not adduce any evidence.
- 6. Heard arguments.
- 7. Perused the record.

POINT:-

- 8. This petition filed under Section 10 of Provincial Insolvency Act. So, it is necessary to go through the prerequisites laid down under Section 10 of Provincial Insolvency Act to enable the debtor to file petition. Relevant portion of Section 10(1) reads as follows:
 - Sec.10 (1): "A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts."
- 9. The very beginning words of section 10 (1) enunciates that, inability to pay the debts is SINE QUA NON for filing insolvency petition by the debtor.
- 10. Section 24 deals with 'procedure at hearing'. The relevant portion of section 24 reads as follows:
 - Sec.24 (1): "On the date fixed for hearing the petition the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

- Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."
- 11. When I.P. filed by debtor shall be dismissed as laid down under section 25(2) of Provincial Insolvency Act, reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

- 12. On combined reading of section 10, 24 and section 25(2), it abundantly clear that petitioner/debtor is not entitled to be declared as insolvent merely for asking it, and the Court has to verify existence of prima facie grounds for considering the plea of debtor to declare him as an insolvent.
- 13. At this juncture, it is relevant to go through Judgments of our High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹. Wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

^{1 2002 (3)} ALD 456

14. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another², the Hon'ble High Court held that,

"A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt."

15. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

"the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities."

16. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others ⁴, the High Court was pleased to examine the provisions of Insolvency Act extensively with emphasizing on Sec. 10 and Sec. 24 of the Provincial Insolvency Act. Ultimately, it was held that,

"even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent."

- 17. On the touchstone of these legal principles, this Court shall now proceed to test the case of petitioner/debtor.
- 18. It is the case of petitioner that, due to Covid-19, he lost his job and relied on his friends and relatives for his day-to-day life, and he has no income sources. Therefore, he could not realize the debts of respondents. Further, it is his case that respondents pressurized him to repay the due

^{2 2014 (3)} ALT 602

^{3 2010 (6)} ALD 514

^{4 2005 (1)} ALT 407

amounts and threatened him, and that his liabilities exceed his assets; hence, he urged the court to adjudge him as insolvent.

- 19. To comply with mandatory requirements under Section 10(1) of the Act that the debts and liabilities of the petitioner exceeded his properties and, thereby, he was unable to pay debts, he relied on his testimony. He examined himself as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. Respondents failed to cross-examine her. Thus, his chief examination became unchallenged.
- 20. In order to prove debts, except for the self-testimony of P.W.1, the petitioner did not produce any documents like a counterfoil, etc. But he furnished particulars of debts, i.e., quantum of debt, nature of debt, and details of the creditors, in petition 'A' schedule property. On the other hand, respondents failed to cross-examine P.W.1. Therefore, the debts cannot be doubted.
- 21. For a better understanding, the particulars of debts shown in petition 'A' schedule property are stated hereunder:

'A' schedule

SI.No.	Name	Nature of the debt	Amount due in Rs.
1.	Bandaru Sanyasa Rao	2- pronotes, 2-cheques	Rs.1,50,000-00
2.	Pallapatti Ravindra Babu	1-pronote, 1-cheque, 2-N.J stamps	Rs.1,70,000-00
3.	Yetukuri Rama Rao	2-pronotes, 2- cheques,	Rs.1,50,000-00
4.	PattiMadhuvarun	2 - pronotes, 2 - cheques, 2-N.J. stamps	Rs.1,50,000-00
5.	The Authorized Authority, Axis Bank Ltd.	s 16-pronotes,16-cheques, 5-N.J. stamps Rs.2	
6.	Tellamekkala Srinivasa Rao	2-pronotes, 2-cheques, 2-N.J. Stamps	Rs.1,00,000-00
		Total :	Rs.9,93,390-00

- 22. The above 'A' schedule property demonstrates that the petitioner is indebted to Rs. 9,93,390/-. Now the question is: whether his debts exceed his properties?
- 23. The petitioner showed his properties in the petition 'B' schedule property. As seen from the petition B schedule, immovable property, securities, and cash (B1 to B4) are shown as nil. B5-Schedule shows wearing apparel and utensils for Rs. 3,000/-.
- It is clear from the petition 'A' and 'B' schedule property that the debts and liabilities of the petitioner are greater than the property shown in the petition 'B' schedule. Thereby, the petitioner complied with mandatory requirements under Section 10(1) of the Act to adjudge himself as insolvent.
- 25. In view of the above facts and circumstances, this Court is of the opinion that the petitioner is entitled to be adjudged as insolvent. Accordingly, this point is answered.
- 26. In the result, the petition is allowed by adjudging the petitioner as insolvent and giving him six months to discharge. All his properties are vested with the Official Receiver to deal with them according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for Gazette publication in compliance with Sec. 30 of the Provincial Insolvency Act.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the Open Court, on this the 15th day of December, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:-

P.W.1: Harimanikayam Chandra Babu

For Respondents:-

None

DOCUMENTS MARKED

For Petitioner:-

Nil

For Respondents:-

Nil

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge, Guntur.

// True copy//

I ADDL. SENIOR CIVIL JUDGE, GUNTUR.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Thursday, the 21st day of December, 2023

INSOLVENCY PETITION NO.58/2022

Between:

Dudekula Khasimbi, W/o Kamataiah, C/o Dudekula, aged about 55 years, R/o #24-16-1/A, 5th Line, Nallacheruvu, Guntur.

...PETITIONER.

AND

- 1. Thota Srinivasa Rao, S/o Bhima Rao, aged about 45 years, Hindu, R/o #15-18-6, 1st line, Maruthi Nagar, Old Guntur, Guntur.
- 2. Pasumarthi Srinivasa Rao, S/o Nageswara Rao, aged about 52 years, Hindu, R/o #22-10-12, Rekhapallivari Veedhi, Lalapeta, Guntur.
- 3. The Official Receiver, District Court Complex, Guntur.

...RESPONDENTS.

This petition coming on 18.12.2023 for final hearing before me in the presence of Sri K.V. Sri Rama Subba Rao, Advocate for petitioner and Respondents 1 and 2 remained exparte, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This insolvency petition is filed for following reliefs:
 - i) to adjudge the first respondent as insolvent,
 - ii) to direct the 3rd respondent i.e., Official Receiver, Guntur District to take possession of the B-1 schedule property belongs to R1 and administer he same for the benefit of general body of creditors including the petitioner;
 - iii) To set aside the sale deed dt.23.02.2022 vide No.2007/2022;
 - iv) and to restrain the 2nd respondent from further alienating the petition schedule property in favour of anybody;
 - v) for costs and

- iv) to pass such other as the Court deems fit and proper in the circumstances of the case.
- 2. The main case of the petitioner, in brief, is that,
 - i) first respondent borrowed a sum of Rs. 8,00,000/- from her for his family expenses and executed a promissory note, agreeing to repay the same with interest at 24% p.a. Subsequently, inspite of repeated demands, he failed to repay the same. On her requests, the first respondent promised to deposit his title deeds pertaining to the schedule property towards security, but he failed to do so. In spite of asking a number of times, he failed to repay the same. Finally, she got issued legal notice dated 22.4.2022 to the first respondent. Therefore, she intends to file a suit for recovery of money.
 - ii) While so, she came to know that the first respondent, represented by his G.P.A.holder sold schedule property to Pasumarthi Srinivasa Rao(second respondent), and executed a sale deed dated 23.2.2022, with the intention of defrauding his creditors, particularly the petitioner. The act of the first respondent amounts to an act of insolvency. Except schedule property, the first respondent has no other properties. Without discharging the debts, the first respondent created false, sham, nominal and collusive documents in favour of second respondent. Therefore, the said transaction is illegal and invalid in the eye of law.
 - respondent had contacted several creditors about several debts.

 All his creditors have been individually putting pressure on him to convey the petition schedule property in their names. In the

meantime, the first respondent conveyed the schedule property to second respondent without discharging the debts of petitioner. Hence, the present petition is filed to declare the first respondent as insolvent and set aside the sale deed dated 23.2.2022.

3. In spite of service of notices on R1 and R2, they did not appear before the court. Hence, they were set exparte.

4. Now the points for determination are :-

- 1. Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?
- 2. Whether sale deed dt.23.02.2022 should be annulled as prayed for?
- 5. At the event of enquiry, the petitioner examined P.W. 1 while relying on Exs.P1 to P4.
- 6. Heard arguments on both sides.
- 7. Perused the record.

POINTNO.2:-

- 2. Whether sale deed dt.23.02.2022 should be annulled as prayed for?
- 8. It is the case of the petitioner that, to defeat and delay his claim, the first respondent executed a sham and nominal sale deed dt.23.02.2022 and therefore, it is liable to be annulled.
- 9. In view of the rival contentions of both parties, this Court has to examine whether the Insolvency Court can annul a sale deed transaction simultaneously with the adjudication of the insolvent. To decide this question, it is desirable to read the provisions of the Provincial Insolvency Act, more particularly Sections 53, 54, and 54-A of the Act.

- 10. Section 53 of the Act envisages that any voluntary transfer made by the debtor if the transferor is adjudged as insolvent can be avoided. Section 54 of the Act enumerates that every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as he become due from his own money in favour of any creditor and giving preference over the other creditors, and if such person is adjudged insolvent on a petition presented, shall be deemed to be fraudulent and void against the receiver and shall be annulled by a Court saving transaction entered into in good faith and for valuable consideration.
- 11. A fraudulent transfer under Section 53 of the Act and a transaction to give fraudulent preference under Section 54 of the Act are void against the receiver, and they shall be annulled on the petition filed within a specific time. Section 54-A of the Act specifies the procedure for annulment of any transfer under Sections 53 or 54 of the Act. According to it, for annulment of any transfer under Sections 53 or 54 of the Act, a petition may be presented by a receiver, or with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such a petition.
- In view of the language used in Sections 53 and 54 of the Act, more particularly, the words "if the transferor is adjudged insolvent" under Section 53 of the Act and "if the person is adjudged insolvent" under Section 54 of the Act indicate that, for annulling a transaction of transfer, the debtor must be adjudged insolvent. So, to annul a transaction of transfer, a pre-condition is adjudging the debtor

as insolvent. It is more clear from the following jurimetrical jurisprudence.

- 13. In Tadikamalla Venkata Ramana Kishore and another Vs. P.Santhakumari and others¹, the Hon'ble composite High Court held at para no.25 as follows:
 - 25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.
- 14. In Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another², the Hon'ble Composite High Court held at para no.31 as follows,
 - [31] This Court held that the transaction covered by any registered document amounts to an act of insolvency under Section 6(1)(b) of the Act. It cannot be annulled except on an application filed under Sections 53 and 54 of the Act after

^{1 2015 (2)} LS 361

^{2 2015} LawSuit(Hyd) 1121

compliance of procedure prescribed under Sections 45 to 50 and 54-A of the Act.

- 15. A conspectus of the above authorities is that, unless the debtor is adjudged as insolvent, the next stage of proof of debt as contemplated under sections 45 to 50 and 54-A of the Act does not arise. After proof of debt, on an application filed under Sections 53 and 54 of the Act, a separate enquire will be conducted on the annulment of a register document by complying with procedure.
- In the present case, this petition is filed to adjudge the first respondent as insolvent and annul the registered sale deed dt.23.02.2022/Ex.P3 executed in favour of the second respondent. Thus, he sought two reliefs simultaneously, and the relief claimed by the petitioner/creditor with regard to annulment of the sale deed transaction is against the spirit of the language used under Sections 53 and 54-A of the Act. In view of the above authorities, at this stage, the registered sale deed dt.23.02.2022 cannot be annulled. There is a separate procedure laid down under Sections 53, 54, and 54-A of the Act. Accordingly, this point is answered.

POINT No.1:-

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

- 17. This petition is filed by the creditor under Section 9 of the Provincial Insolvency Act to adjudge the first respondent as insolvent. In view of the claim of the petitioner, it is noteworthy to examine Section 9 of the Act, which deals with creditor insolvency petition. The said provision reads as follows:
 - **9. Conditions on which creditor may petition.**—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

- (2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.
- 18. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency.
- 19. In so far as compliance of first and second requirements under Section 9 of the Act, it is the case of petitioner that the first respondent borrowed Rs. 8,00,000/- on 12.12.2019 for the purpose of his family expenses and executed a promissory note, agreeing to repay the same along with interest at 24% p.a.
- 20. In order to comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioner to prove that the first respondent borrowed an amount and was indebted to the petitioner. In order to prove the case, the petitioner

examined himself as PW1. He reiterated the averments of petition in her chief examination affidavit. Respondents failed to cross-examine her. Thereby, her evidence is unchallenged.

21. The evidence of Pw1 establishes the lending amount and execution of promissory note. After thorough scrutiny of the evidence of Pw 1, this court has not found any circumstances to doubt the case of petitioner. Thus, the petitioner established the lending amount and execution of promissory note through her evidence. Hence, it is held that the petitioner, prima facie, established the lending amount and execution of promissory note/Ex.P4. Thereby, the petitioner complied with the first and second requirements of Sec. 9 of the Act stated above.

ACT OF INSOLVENCY:

- As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of act of insolvency. According to petitioner, the first respondent committed an act of insolvency by executing a sale deed of schedule in favour of second respondent without passing any consideration thereunder, intending to defeat and defraud her claim. In view of the contentions of petitioner, the question before the court is whether the execution of sale deed amounts to an act of insolvency or not?
- 23. Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant.
- 24. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section

- 6(1)(a) to (c) of the Act. For a better appreciation of the case, relevant provision is re-produce hereunder:
 - **6. Acts of insolvency.**—(1) A debtor commits an act of insolvency in each of the following cases, namely:—
 - (a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
 - (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
 - (c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.
- As seen from the sale deed/Ex.P3, property was not transferred to creditors of first respondent as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.
- 27. As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the first respondent executed a sale deed dt.23.02.2022 in favour of the second respondent with fraudulent

intention to defeat his claim, and thereby, the first respondent committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, this provision is relevant to the present case.

- 28. Sale deed/Ex.P3 reveals that the second respondent purchased schedule property for Rs. 9,70,000/-. At this stage, it will not be examined whether the second respondent is a bonafide purchaser for valuable consideration, and if so, whether his transaction will be protected under Section 55 of the Act? They will be determined on separate enquiry relating to the annulment of sale transaction after adjudging the debtor as insolvent.
- 29. It is already stated above that the petitioner established the debt of first respondent. It is not in dispute that the first respondent executed a sale deed in favour of second respondent. But the first respondent did not discharge the whole or any part of the debt, even after the sale transaction. Thus, the debt of first respondent due to the petitioner remains in existence even after the sale deed/original of Ex.P3. Instead of repaying the debt, the first respondent alienated his property under a registered sale deed without discharging promissory note.
- 30. All the above facts go to show the conduct of the first respondent that he alienated the property to defeat and defraud the petitioner.

Finding on the act of insolvency:

31. All the above facts and circumstances establish that the act of first respondent in executing the register registered sale deed/Ex.P3, without discharging the promissory note debt stated

above constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

LIMITATION:

- 32. Sale deed/Ex.P3 was executed on 23.02.2022, whereas the present I.P. was filed on 29.04.2022 vide C.F.R.No.2884/29.04.2022. A creditor insolvency petition must be presented within three months from the date of the act of insolvency (alienation of property). It shows that the present I.P. is presented within limitation.
- 33. In view of the above facts and circumstances, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is settled.

RESULT:

34. In the result, the petition is allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making a Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 21st day of December, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1: Dudekula Khasimbi

For Respondents:

None

DOCUMENTS MARKED

For Petitioner:

Ex.P1: Office copy of legal notice dt.20.4.2021 along with postal receipt

Ex.P2: Postal acknowledgment

Ex.P3: Certified copy of regd. Sale deed dt. 23.2.2022.

Ex.P4: Promissory note dated 12.12.2012.

For Respondents:

- NIL-

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge, Guntur.

// True copy//

I ADDL. SENIOR CIVIL JUDGE, GUNTUR.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Thursday this the 31st day of August, 2023

INSOLVENCY PETITION NO.44/2014

Between:

Vasantha Srinivasa Rao, S/o Sambaiah, Hindu, aged about 39 years, agriculturist, R/o Ananthavarappadu village, Vatticherukuru mandal, Guntur District.

...PETITIONER.

AND

- 1. Bonthu Suneetha, W/o Venu Babu, Hindu, aged 27 years, R/o Flat No.302, Ambica Paradise, Near Vignan College, Palakaluru Road, Palakaluru Village, Guntur Rural Mandal, Guntur District.
- 2. Sarabu Satyanarayana, S/o Mallaiah, Hindu, aged 48 years, R/o Door No.8-7-74/3/2, Central Colony, Hastinapuram, L.B. Nagar, Hyderabad City, Ranga Reddy District.
- 3. Official Receiver, Official Receiver Court, Court Compound, Guntur.

...RESPONDENTS.

This petition coming on 18.8.2023 for final hearing before me in the presence of Sri K. Devarajan, Advocate for petitioner and Sri K. Durga Prasad, Advocate for R1 and Sri P. Raja Rao, Advocate for R2, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This insolvency petition is filed for following reliefs:
 - i) to declare the first respondent as an insolvent;
 - ii) to vest the petition schedule property with the Official Receiver for administration;
 - iii) to direct the Official Receiver to apply U/Sec.53 and 54 of Provincial Insolvency Act after the 1st respondent is adjudicated as an insolvent and set aside the alienation of Regd. Sale Deed dated 7.7.2014 vide Doc.No.8571/2014 before the Insolvency Court,
 - iv) for costs of the petition and
 - v) to pass such other reliefs as the Court deems fit and proper under the circumstances of the case.

2. The main case of the petitioner, in brief, is that,

the first respondent is doing business in the cotton trade. She borrowed Rs. 7,00,000/- on 12.1.2014 and Rs. 5,00,000/- on 26.1.2014, respectively, from the petitioner and executed promissory notes on respective dates, agreeing to repay the same with interest at 24% p.a.

- ii) Subsequently, in spite of repeated demands, the first respondent postponed the discharge of debts. While so, the petitioner suddenly learnt that the first respondent was making attempts to screen away her properties with the intention of avoiding the discharge of promissory note debts. On being verified, it was revealed that first respondent created a sham, nominal, and collusive sale deed, Doc.No. 8571/2014 dated 7.7.2014 in favour of second respondent to defraud the general creditors along with the petitioner herein.
- iii) The first respondent transferred her property in favour of second respondent fraudulently without discharging her debts. Further, she is trying to leave the jurisdiction of the court and absconding to unknown places. These acts of respondent amount to act of insolvency.
- iv) Respondents 1 and 2 colluded with each other and fraudulently brought into existence of sale deed in favour of second respondent to defraud the petitioner. Hence, the present petition is filed to adjudge the first respondent as insolvent, with a direction to the official receiver to apply Sections 53 and 54 of the Insolvency Act.

- 3. On the other hand, respondents 1 and 2 resisted the claim of the petitioner by filing separate counters. Respondents 1 and 2 denied the borrowing amount and execution of promissory notes. The main case of first respondent, in brief, is that:
 - i) she never had any access to or even a facial acquaintance with the petitioner. Her husband has been in the cotton trade business for several years. But the firm by the name of Maruthi Cotton Traders was registered in her name on 10.3.2014. Prior to that, there was no business concern in her name. Maruthi Cotton Traders is in her name, but her husband only used to do business, and she is only a housewife.
 - ii) Namburu Siva Sankara Rao is resident Ananthavarappadu village. He used to act as an agent between the ryots and cotton traders. He also acted as an agent for her purchasing cotton from the ryots husband in Ananthatvarappadu village for doing business. Siva Sankara Rao used to collect commissions from both sides. In fact, the husband of first respondent never had any direct access to any of the ryots. Siva Sankara Rao used to be a liaison between ryots and her husband. Even the purchase price of cotton would be given to Siva Sankara Rao by her husband only. Now and then, cotton would be supplied to her husband either in cash or on a credit basis. During the course, her husband fell in due of Rs. 6,00,000/- to Siva Sankara Rao over a period of time until July, 2014. The husband of first respondent became due to Siva Sankar in view of the slump in the cotton business.

- iii) In the first week of September 2014, Siva Sankara Rao, along with the petitioner, came to her house and demanded her husband to get signatures of first respondent on two blank promissory notes and two non-judicial stamp papers as security for the debt owed by her husband. When her husband questioned why her signatures were required, Siva Sankara Rao replied that he did not have any immovable properties of his own. Then she replied that immovable property stood in her name had already been obtained by one Sarabu Satyanarayana high-handedly, playing undue influence and coercion on her while keeping a threat on the life of her husband. She was going to challenge the said sale deed on the grounds of fraud, coercion, and undue influence.
- v) Siva Sankara Rao exerted undue influence over her, and her husband pressurized and forced her to sign two blank promissory notes and two blank non-judicial stamp papers, taking advantage of their helplessness. Having no other choice, she was forced to put her signature thereon.
- vi) In fact, no consideration was passed from the petitioner under the promissory notes. Further, no transaction took place under promissory notes. Even no business was being run by her husband on the alleged dates of promissory notes. As such, promissory notes are devoid of consideration, and there is no debtor and creditor relationship between them. She has been contesting the suit in O.S.No. 393/2014 on the file of Hon'ble II Addl. District Judge, Guntur, filed by one Sarabu Satyanarayana seeking a declaration of title. Further, she filed a suit for cancellation of a registered sale deed dated 7.7.2014. As there is

no debtor and creditor relationship between them, this insolvency petition is not maintainable. Hence, she urged the court to dismiss the petition.

- 4. The main case of second respondent, in brief, is that:
 - i) Originally, the first respondent purchased the schedule property from Aluri Shankara Rao under a registered sale deed dated 5.2.2014. Subsequently, she obtained proceedings, vide R.C.No. 1026-2014 dated 28.6.2014 from RDO, Guntur, for conversion of agricultural land into non-agricultural land. After the bifurcation of the state of A.P., it was announced that the new capital for the state of A.P. would be in between Guntur and Vijayawada. Therefore, he intended to purchase some property near Guntur and searched for it. At that juncture, the husband of first respondent, by name Venu Babu, contacted him and informed him that they had put the petition schedule property for sale. Thereupon, he visited the schedule property and verified the original title deeds and the link documents. At the time of the bargain, one Vadlamudi Kishore, who is a close associate of Venu Babu, also participated along with the first respondent and Venu Babu. They made him believe that petition schedule property is very free from all sorts of encumbrances, mortgages, charges, liens, leases, litigation, minor disputes, etc., and the first respondent has every right and entitlement to sell and transfer valid title and possession of the same. Finally, the bargain was settled at Rs. 41,74,500/- as a bill contract. It was understood that the first respondent and her husband would obtain the order of conversion of the land, and thereafter, second respondent

would obtain the valid registered sale deed on payment of sale consideration. In turn, K. Venu Babu informed him (husband of first respondent) that the proceedings of the RDO were not ready. By the end of June, Venu Babu called him on the phone, stating that the proceedings of the RDO were ready. On that, he came to Guntur on 7.7.2014 and paid the entire sale consideration of Rs. 41,74,500/- to the first respondent in the presence of witnesses, i.e., Venu Babu and one Meda Srinivasa rao. On receipt of sale consideration, the first respondent delivered possession of the schedule property to him and executed a valid registered sale deed dated 7.7.2014 vide Doc.No. 8571/2014 and also handed over the registered sale deed dated 5.2.2014 and the conversion proceedings of the RDO, Guntur. Since then, he has been in possession of and enjoying the same.

- ii) He borrowed huge amounts from Mantena Buchaiah for the purpose of purchasing the schedule property. As per the understanding, he deposited the original title deed of schedule property with him (Butchaiah). On 19.7.2014 when he went to the Sub Registrar Office, Guntur, for an encumbrance certificate, he came to know that a suit in O.S.No. 273/2014 was filed and an interim injunction order was communicated to the Sub Registrar, Guntur, on the schedule property.
- iii) On verification, it came to light that the first respondent, Venu Babu, Vadlamudi Kishore colluded and manipulated an agreement of sale dated 3.6.2014, in favour of Vadlamudi Kishore with an ante date with a fraudulent intention to cheat and to blackmail him for a demand of more money.

- nominal and a sham, and no consideration was passed thereunder. The alleged agreement of sale is not a bonafide transaction, and the sale is not binding on him. He is a bonafide purchaser of petition schedule property. He lodged a report to Guntur Rural P.S., against the first respondent, Venu Babu, Vadlamudi Kishore. As the police did not take any action, he filed a private complaint against them for the offence of cheating. It was registered as a crime and is pending investigation.
- v) The first respondent, Venu Babu, and Vadlamudi Kishore were making hectic attempts to forcibly enter the schedule property and to dispose of him from the schedule property. In view of the circumstances, he was constrained to file O.S. 393/2014 on the file of Hon'ble II Addl. District Judge, Guntur, for declaration of title and for consequential permanent injunction.
- vi) First respondent, Venu Babu, Vadlamudi Kishore and the petitioner are close associates, and all of them joined hands to defeat the legitimate right, possession, and title in the schedule property by manipulating the promissory notes with ante dates. In fact, no consideration was passed thereunder. This insolvency petition was filed as a safe guard for future litigation, knowing that they would fail in their attempts in filing O.S. 273/2014. The first respondent has another vacant site an extent of 245-6/9 sq. yards in D.No. 1132/a1, 1132/a2, 1132/a3 of Guntur town, bounded by: east: the site sold by Muntaj Bagam; south: plat No.2 belongs to Kunku Bramaya; west: road; and north: site belongs to Ragi Subaya and Karishma. It was purchased by the

first respondent under registered Doc.No. 4200/2014 dated 19.4.2014. Hence, he urged the court to dismiss the petition.

4. Now the points for determination are:-

Whether the first respondent committed an act of insolvency; if so, is she liable to be adjudged as insolvent?

- 5. During the course of enquiry, the petitioner examined P.Ws. 1 to 4, while relying on Exs.P1 to P4. On the other hand, respondents examined R.Ws.1 and 2, and exhibited Ex.R.1 to R.4.
- 6. Heard arguments on both sides.
- 7. Perused the record.
- 8. Before embarking on the above point, it is appropriate to mention the admitted facts observed by this court on perusal of pleadings and oral and documentary evidence of both parties are as follows:
 - i) The cotton business is in the name of first respondent, but her husband is looking after the business.
 - ii) The first respondent executed a sale deed dated 7.7.2014/Ex.P3 in favour of second respondent regarding petition schedule property. But she would contend that the sale deed was obtained by undue influence and coercion.
 - iii) Namburi Siva Sankara Rao is the brother-in-law of petitioner.
 - iv) The first respondent filed a criminal case against the second respondent and others, and the same is pending.
 - v) Vadlamudi Kishore filed a suit in O.S.No. 273/2014 on the file of Hon'ble II Addl. District Judge, Guntur, for specific performance of contract.

- vi) The second respondent also filed a suit in O.S. No. 393/2014 of the file of II Addl. District Judge, Guntur, against the first respondent and others for declaration of title.
- vii) Similarly, the first respondent also filed suit in O.S. No. 362/2015 against the second respondent herein and two others for cancellation of sale deed dated 7.7.2014 and the same is pending.

POINT:-

Whether the first respondent committed an act of insolvency; if so, is she liable to be adjudged as insolvent?

- 9. It is the case of the petitioner that, first respondent borrowed Rs. 7,00,000/- and Rs. 5,00,000/- on 12.1.2014 and 26.1.2014, respectively, and executed promissory notes on respective dates, agreeing to repay the same with interest at 24% p.a. Subsequently, instead of repaying the debts, the first respondent executed a registered sale deed in favour of the second respondent with the intention to defeat and defraud his claim; thereby, first respondent committed an act of insolvency, and hence, she is liable to be adjudged as insolvent.
- 10. On the other hand, the first respondent strenuously opposed the borrowing amounts and execution of promissory notes, contending that previously, Namburi Siva Sankara Rao obtained her signatures on blank signed promissory notes and N.J. stamp papers by putting her under pressure and coercion, as security for the due amount of Rs. 6,00,000/- in the transaction between Siva Sankara Rao and her husband, and subsequently, taking advantage of the same, the present insolvency petition was filed. Further, she denied the

execution of sale deed, contending that she never executed the sale deed voluntarily, and hence, she filed a suit for cancellation of the same.

- On the other hand, the second respondent denied the case of petitioner, contending that he is a bonafide purchaser, and to defeat the right and title over the schedule property, the present petition is filed collusively.
- 12. In the course of arguments learned counsel for second respondent questioned the maintainability of this petition as there is no money decree in favour of petitioner and therefore, his debt is not qualified by the court and hence, this insolvency petition is not maintainable.
- 13. Since the second respondent questioned the maintainability of present insolvency petition, it is appropriate to discuss it before going into the above point.
- 14. Learned counsel for second respondent specifically contended that there is no money decree in favour of petitioner, and as such, his debt is not qualified and therefore, basing the alleged debt, present petition is not maintainable. In view of the contentions of learned counsel, Section 9 of the Act has to be perused carefully. Section 9 of the Act envisages conditions on which a creditor may file a petition, which reads as follows:
 - **9. Conditions on which creditor may petition.**—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—
 - (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

- (2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.
- The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or above is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency.
- As seen from the above provision, obtaining a decree against the debtor is not a condition precedent to filing an insolvency petition. When the provision does not require any money decree for instituting a petition under Section 9, non-obtaining of money decree does not prevent the petitioner from filing an insolvency petition.
- 17. In Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another¹, the Hon'ble High Court held at para no. 22 as follows:-
 - [22] None of the conditions under Section 9 speaks about filing of a suit and obtaining a decree for filing an insolvency petition and at the same time, Section 2 Clause (1)(a)

^{1 2015} LawSuit(Hyd) 1121

defines the 'creditor' as "it includes a decree-holder, 'debt' includes a judgment-debt, and 'debtor' includes a judgmentdebtor". In view of the definition of the creditor, a person, who lent amount, is also a creditor as defined under Section 2(1)(a) of the Act. The word 'creditor' is much wider than a mere decree-holder and when I turn to Section 9, it is clear and it is not disputed that for the purposes of Section 9(a) to (h) the expression "Creditor" used in that section is used in its wider connotation and would include not only a decreeholder but also an assignee of a decree-holder. Therefore, the person, who advanced money to the first respondent, the petitioners are entitled to initiate proceedings under Section 9 of the Act since obtaining decree against the debtor is not a precondition to adjudge the first respondent as insolvent. Therefore, dismissal of the application on the ground that the petitioners are not the judgment-debtors and failed to obtain any decree by filing a suit is not a ground to dismiss the Insolvency Petition but the first appellate Court on erroneous appreciation of law dismissed the Insolvency Petition, setting aside the order passed by the Additional Senior Civil Judge at Eluru.

18. The above authority crystallizes that obtaining of decree is not a pre-condition to filing a creditor IP or adjudging the debtor as insolvent. The above authority is squarely applicable to the present case. In view of the above authority, the submission of learned counsel for respondents is not sustainable.

Compliance with the first and second requirements under Section 9 of the Act:

19. Reverting to the first and second conditions enumerated under Section 9 of the Act stated above, it is the specific case of petitioner that the first respondent borrowed Rs. 7,00,000/- and Rs. 5,00,000/- from him on 12.1.2014 and 26.1.2014 and executed

promissory notes on respective dates. On the other hand, both respondents denied the borrowing amounts by the first respondent from the petitioner.

- 20. In view of the rival contentions of both parties and the above-stated requirements, it is obvious to say that the burden of proof is on the petitioner to clinchingly prove borrowing amounts and the execution of promissory notes in the light of specific defence urged by the respondents. In order to prove the case, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. Respondents 1 and 2 cross-examined him. During cross-examination, respondents 1 and 2 focused on four aspects: one is, acquaintance with the first respondent; second is, avocation of first respondent and her husband; third is, capacity of the petitioner; and fourth is, execution of promissory notes transaction.
- 21. In so far as the first aspect is concerned, PW1 deposed that he and first respondent belong to same village, but they are not relatives. Further, he deposed that he knew the first respondent through his brother-in-law(Siva Sankara Rao).
- 22. Learned counsel for first respondent strenuously denied acquaintance between the petitioner and first respondent. The same contention was also taken in the counter, specifically. However, in the cross-examination, PW1 narrated how he got acquaintacne with the first respondent. Though he categorically stated his acquaintance with the first respondent, nowhere in his cross-examination, respondents denied acquaintance of petitioner with first respondent. Thus, respondents impliedly admitted acquaintance between the petitioner and first respondent.

- 23. In so far as the second aspect is concerned, PW1 testified that the first respondent is doing cotton business and her husband is having a cotton mill, but the said mill is in the name of first respondent, and its name is Mahalakshmi Cotton Mill. He further testified that he was informed that the said mill was in the name of first respondent, but her husband is looking after the mill. He further testified that he has no documentary proof to show Mahalakshmi Cotton Mill is in the name of first respondent and was in existence at the time of promissory notes transaction.
- 24. In the course of the arguments, learned counsel for first respondent would contend that the petitioner did not file any document to show that Mahalakshmi Cotton Mill is in the name of first respondent and her husband is doing business.
- 25. Learned counsel rightly submitted that PW1(petitioner) admitted that there is no documentary proof with him to show that the said business is in the name of first respondent and was in existence as on the date of promissory notes transaction. Regardless of the contentions of the learned counsel, the first respondent herself admitted that business is in her name, but her husband is doing business. A registration certificate for a firm is available with the owner or proprietor but not with the third party. So, non-filing of document to show whose name business is standing is insignificant in the present case. Hence, the contentions of learned counsel are not tenable.
- 26. In so far as the third aspect is concerned, PW1 deposed that he has Ac. 13.00 cents of joint family property and is doing cultivation. Further, he deposed that he had documentary proof to that

effect, but, originals were with the Bank of India. It was recorded by my learned predecessor in the cross-examination of PW1 (Petitioner) that the witness brought photocopies of title deeds.

- 27. In so far as the fourth aspect is concerned, PW1 testified that five days prior to promissory notes/Exs.P1 and P2 transactions, the first respondent's husband asked him to lend money, and accordingly, he lent Rs. 7,00,000/- under promissory note/Ex.P1. He further deposed that he secured Rs. 7,00,000/- by selling cotton and mirchi. He further testified that three days after Ex.P1 transaction, again, husband of first respondent asked him to lend some more amount. Accordingly, he lent Rs. 5,00,000/-, which was also secured on selling cotton and mirch. Thus, he narrated how he secured Rs. 7,00,000/- and Rs. 5,00,000/-.
- 28. Further, he testified that at the time of promissory note/Ex.P1 transaction, Sadam Venkateswara Rao, Mandadapu Amaraiah, and Namburu Murari were present; and that, at the time of promissory note/Ex.P2 transaction, Narra Visweswara Rao, Mandadapu Amaraiah and Katta Siva Ramaiah were present. He further testified scribe and attestors of promissory note/Ex.P1 belonged to his village, while attestors of promissory note/Ex.P2 belonged to his community. He further testified that the promissory note/Ex.P1 transaction was held between 12.00 and 1.00 p.m.; and that promissory notes/Exs.P1 and 2 were executed at his house.
- 29. Besides the above, the petitioner examined Sadam Venkateswara Rao as PW2. He claims to be one of the attestors to the promissory note/Ex.P1. He supports the case petitioner regarding the lending of amount and the execution of promissory note. He testified

in his chief examination affidavit that on 12.1.2014 first respondent borrowed an amount of Rs. 7,00,000/- from the petitioner and executed a promissory note/Ex.P1 with interest at 24% p.a.; and that he, along with Mandadapu Amaraiah, are the attestors and Namburi Murahari Rao is the scribe of promissory note/Ex.P1. The respondent cross-examined him.

- 30. In the cross-examination, PW2 deposed that the petitioner is neither a relative nor a friend but that he knows petitioner. He further testified that the petitioner is cultivating land of Ac. 15.00 of joint family property, while the first respondent has a ginning mill. He further deposed that generally, the cotton was purchased to some extent on a cash basis and some on a credit basis. Further, he deposed that the first respondent borrowed an amount for the purpose of business; and that when he went to the house of petitioner, first respondent, scribe, and attestors were present and that he witnessed while passing consideration, it is in one thousand rupee denomination. He further deposed that after drafting a promissory note, initially the first respondent signed. I saw the first respondent two or three months prior to the promissory note/Ex.P1 transaction.
- In addition to the above, the petitioner examined Narra Visweswara Rao as PW3. He also claims to be one of attestors to the promissory note/Ex.P2. He supported the case of petitioner regarding borrowing amount and execution of promissory note. He testified in his chief examination affidavit that on 26.1.2014 first respondent borrowed Rs. 5,00,000/- from him and executed a promissory note with interest at 24% p.a.; and that Katta Sivaramaiah is the scribe,

himself and Mandadapu Amaraiah are attestors to the promissory note. Respondents cross-examined him.

- 32. In the cross-examination, PW3 deposed that the petitioner is solvent, having Ac. 15.00 cents of land; and that he knows the first respondent in the year 2013; and the first respondent and her husband are doing cotton business; and that he sold cotton to their mill.
- 33. Further, PW3 deposed that the transaction under promissory note/Ex.P2 was held on 26.1.2014 at 12.00 noon, and at that time, himself, the petitioner, first respondent, and Katta Siva Ramaiah were present; and that he counted consideration, and it was in the denomination of thousand rupee currency notes in a sealed bundle.
- 34. Apart from the above, the petitioner examined Vanga Brahma Reddy as PW4. His evidence is constrained to borrowing amounts by the first respondent from the petitioner and from various persons, selling her property secretly, etc. His evidence is not appropriate here. His evidence will be discussed at an appropriate time.
- 35. The above evidence of PWs 1 to 3 evinces minute things under both promissory notes transactions, such as date, time and place of execution of promissory note, quantum of lending amount thereunder, particulars of persons in whose presence promissory notes were executed, denomination lending amount, etc.
- 36. In order to make the court disbelieve the evidence of petitioner, learned counsel for first respondent argued on several aspects. Learned counsel for first respondent invited the attention of

this court on the evidence of PW1 and submitted that both times, the husband of first respondent asked for money but not the first respondent, though she allegedly borrowed an amount and this circumstance creates strong doubt on the case of petitioner.

The learned counsel rightly submitted that PW1 testified in his cross-examination that five days prior to the promissory note/Ex.P1 transaction, the husband of first respondent asked to lend amount, and that three days after the promissory note/Ex.P1 transaction, again the husband of first respondent asked for money. For better appreciation of the case, relevant portion of evidence of PW1 is reproduced hereunder:

"The amount was asked by the husband of R1 five days prior to the date of transaction under Ex.P1."

"Three days subsequent to the Ex.P1 transaction the husband of R1 is telephoned to me and asked for the amount."

- 38. Besides the above, PW1 deposed that the husband of first respondent is doing business in the name of first respondent. On the other hand, the first respondent also categorically admitted the same. Since the husband of first respondent is looking after the business of his wife (first respondent), nothing wrong with him asking the petitioner to lend the amount to his wife.
- 39. As per the version of petitioner in the pleadings, oral evidence and promissory notes/Exs.P1 and P2, amount was borrowed for business purposes. Admittedly, business is in the name of first respondent. As such, amount was lent to the first respondent under promissory notes/Exs.P1 and P2 at the instance of her husband. After thorough verification of the evidence, this court has not found any

improbable circumstances as contended by the learned counsel.

Therefore, the contentions of learned counsel are not tenable.

- 40. Further, learned counsel for first respondent would argue that though the petitioner allegedly lent a huge amount of Rs. 7,00,000/- and Rs. 5,00,000, he did not take any security, which creates some doubt on the promissory notes/Exs.P1 and P2 transactions.
- 41. Admittedly, the petitioner did not take any security for debt under promissory notes/Exs.P1 and P2 transactions. Further, it is admitted that the husband of first respondent is looking after the business, which is in the name of first respondent. As the business of first respondent is running in a prosperous manner, out of confidence, creditors may lend amount without taking security. Further, PW1 categorically deposed that he knows the first respondent through his brother-in-law, Namburi Siva Sankara Rao. In view of circumstances, lending amounts under promissory notes/Exs.P1 and P2 without taking security is not a doubtful circumstance.
- 42. Eventually, learned counsel for first respondent would submit that attestors/PWs 2 and 3 did not support the case of petitioner and consequently, promissory notes/Exs.P1 and P2 are not proved. But, as seen from the evidence of PWs 1 to 3, there is no material discrepancy among them regarding the execution of promissory note transactions. On thorough verification of their evidence, this court has not found any glaring discrepancy regarding promissory notes/Exs.P1 and P2 transactions. Therefore, the arguments of learned counsel cannot be countenanced.

- 43. Thus, all the contentions of learned counsel are not tenable.
- 44. It is relevant to note that respondents cross-examined PWs 1 to 3 at length, but nothing favourable answers were elicited from them. Admittedly, there is no animosity between respondents 1 and 2 on the one hand and PWs 2 and 3 on the other side. However, this court has not found any circumstances to disbelieve their evidence. Further, evidence of PWs 1 to 3 corroborates each other regarding the execution of promissory notes and lending amount thereunder.
- On thorough scrutiny of their evidence, this court has not found any reason to disbelieve the execution of promissory notes and the lending amount thereunder. The evidence of PWs 1 to 3 is consistent, inspires confidence, and trustworthy that the petitioner lent Rs. 7,00,000/- on 12.1.2014 and Rs. 5,00,000/- on 26.1.2014, to the first respondent and in turn, the first respondent executed promissory notes/Exs.P1 and P2 on respective dates.
- 46. It is not out of place to mention here that in the pleadings itself, the first respondent admitted execution of promissory notes/Exs.P1 and P2. Besides that, she contended that her signatures were obtained by putting her under pressure and coercion. Irrespective of her contention of pressure and coercion, she admitted her signatures on promissory notes/Exs.P1 and P2.
- 47. In Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal², the Hon'ble Apex Court held that,

Once execution of the promissory note is admitted, the presumption under section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence.

48. In Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm & Ors.³, it was held that,

"Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the Court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. ..."

- 19. The above authorities and Section 118(a) of the Negotiable Instrument Act make it very clear that, when execution of a promissory notes is admitted, it is presumed that consideration was passed under the promissory note. In view of the above jurisprudence and admission of first respondent, the presumption is in favour of petitioner that consideration was passed under the promissory notes.
- Regardless of presumption, the petitioner established the execution of promissory notes and passing of consideration thereunder through the evidence of PWs 1 to 3. Thus, the plaintiff discharged their burden. Now, the onus shifts to the defendant.

Evidence of first respondent:

51. Now the onus shifts to the first respondent. She strenuously contended that on 10.3.2014 proprietary concern firm by the name of Maruthi Cotton Traders was registered in her name, and

^{3 2008 (8)} SCALE 680

prior to that, her firm is not in her name. Further, it is her case that there was a transaction of selling cotton between her husband and Siva Sankara Rao and over a period of time till July 2014, her husband became due of Rs. 6,00,000/- due to a slump in the cotton business. She further contended that Siva Sankara Rao obtained her signatures on two blank promissory notes and N.J. stamp papers by putting her under pressure and coercion and subsequently, the present petition was filed, taking advantage of those promissory notes.

- In order to prove her case, she examined herself as RW1. She reiterated the averments of her counter in her chief examination affidavit. In her cross-examination, she admitted her signatures on promissory notes/Exs.P1 and P2.
- In order to prove the establishment of firm in 2014, she filed registration certificates issued by the Assistant Commercial Tax Officer, VAT Registering Authority, Guntur. They were marked as Exs.R1 and R2. Ex.R1/registration certificate reveals that Assistant Commercial Tax officer, VAT Registering Authority, Guntur, issued this certificate in the name of Maruthi Cotton Traders, and it was issued on 10.3.2014.
- 54. Similarly, Ex.R2 evinces that the Assistant Commercial Tax Officer, VAT Registering Authority, Guntur, issued this certificate in the name of Lakshmi Narasimha Traders, situated at 45/2 C/o Boyapati Subbaiah Mills, Gangamma Estate, Etukur Road, Guntur, and it was issued on 4.9.2015.
- 55. Except names of firms, they do not disclose the name of the proprietary/propritrix. Even they do not disclose whether they are sole proprietary concerns or partnership firms. As there is no name of

first respondent on Exs.R1 and R2, we cannot believe the version of first respondent that, first respondent proprietary concern firm was registered in her name on 10.3.2014. In view of the above circumstances, Exs.R1 and R2 are not helpful to the case of first respondent.

- 56. Even if they are considered, at best, they disclose that in the year 2014, the firm was registered in the name of first respondent. Except for that, they do not disprove the case of petitioner regarding the execution of promissory notes and lending amount thereunder.
- According to first respondent, her husband is looking after the business, though it is in her name. Even according to the petitioner, at the instance of first respondent's husband, he lent amount to the first respondent. In view of the pleadings of both petitioner and first respondent, husband of first respondent is a crucial witness to this case. But first respondent did not choose to examine him. For the best reasons known to her, why she did not examine him to prove her version.
- In order to disprove the case of petitioner, learned counsel for first respondent argued on two aspects. In so far as the first aspect is concerned, the learned counsel for first respondent invited the attention of this court to the evidence of PW1 and submitted that PW1 himself admitted the active role of Siva Sankara Rao and that he is behind this litigation, and thereby, his evidence fortifies the defence of first respondent.
- In view of arguments of learned counsel, evidence of PW1 has to be examined in the light of defence of first respondent.

 According to the first respondent, there were transactions of supply of

cotton between the first respondent and Sankara Rao, and over a period of time, her husband became due Rs. 6,00,000/- to Sankara Rao and that Sankara Rao obtained her signatures by putting her under pressure and coercion, and subsequently, he got filed present petition. Thus, she pleaded that Sankara Rao is behind this litigation.

Coming to cross-examination of PW1, he admitted that Sankara Rao has been doing brokerage in the cotton business for 15 years; and that he(PW1) got acquaintance with first respondent through his brother-in-law(Sankara Rao); and that on the date of giving evidence, Sankara Rao accompanied him. For a better appreciation of case, a relevant portion of evidence of PW1 is reproduced hereunder:

"Namburi Sankara Rao is doing brokeraging in cotton business for the last 15 years."

"He does brokerage in cotton in Annanthavarapadu by purchasing it from the cotton farmers."

"I know R1 through my brother-in-law by name Namburi Sankara Rao."

"One Siva Sankara Rao is my brother-in-law, he accompanied me to the court today."

Thus, it is elicited from PW1 that he got acquaintance with the first respondent through his brother-in-law(Namburi Sankara Rao) who is in the cotton brokerage business. Except for that, nothing was elicited from PW1 or placed any material to show that Sankara Rao behind this litigation or at his instance, the present petition is filed or no real transactions were held under promissory notes/Exs.P1 and P2. Therefore, based on the above evidence of PW1, his entire case cannot be discarded. Hence, contentions of learned counsel are not tenable.

- The learned counsel for first respondent further drawn the attention of this court to the evidence of PW1 and submitted that PW1 secured lending on selling cotton and mirch under receipts, and those receipts are available with him, but he did not file receipts, though the lending amount is in question in this petition. Therefore, the non-filing of said crucial documents (receipts) gives adverse inferences on the case of petitioner, the learned counsel further argued.
- of PW1 has to be examined carefully. PW1 categorically stated in his cross examination that he secured Rs. 7,00,000/- and Rs. 5,00,000/- on selling cotton and mirth. Further, he deposed that he can file receipts of selling cotton and mirch, if they are available. For a better understanding, a relevant portion of evidence of PW1 is reproduced hereunder:

"The amount was got to him in his business by selling the mirchi in the firm by name Lakshmi Sai Traders, MirchiYard."

"I am having receipt to show that I sold the mirchi to Lakshmi Sai Traders.

I sold the mirchi about one month prior to the transaction under Ex.P1.

I sold the cotton to one Appa Rao 10 days prior to Ex.A1 transaction.

The said Appa Rao is the owner of ginning mill.

There is no receipt issued by the said ginning mill.

I got an amount of Rs.7,00,000/- by selling cotton and mirchi to the respective traders."

"If available I can file documentary proof I got Rs.7,00,000/- by selling cotton and mirchi to the respective traders."

"I sold cotton and mirchi to the very same traders.

If available I filed documentary proof to show that I sold cotton and mirchi to the respective traders."

- 64. It is candidly clear from the above emphasized that PW1 agreed to file receipts subject to availability. It is the specific argument of learned counsel for petitioner that, as receipts are not available, the petitioner could not file the same. Thus, the submissions of learned counsel are justifiable. Whatever the evidence of PW1 and submissions of learned counsel for petitioner, no receipt is filed. Now the question before the court is whether non-filing of receipts gives adverse inference on the case of petitioner?
- 65. Admittedly, either of the respondents did not issue any notice to the petitioner under Order 12 Rule 8 of the Code of Civil Procedure or file any petition under Order 11 Rule 14 of the Code, for cause production of above-stated receipts. Unless the petitioner was called upon to produce the receipts either by the respondents or by the Court orders him to do so, no adverse inference can be drawn⁴. As the respondents did not ask or demand the petitioner for production of receipts, non-filing of the same is not at all fatal to the plaintiff's case.
- 66. It is relevant to note that respondents did not dispute with execution of promissory notes. When execution of promissory notes are admitted, it is for the executant to prove that creditor has no capacity to lend the amount⁵. So non-filing of documents does not vitiate the case of petitioner.
- 67. Viewed from any angle, it is for the respondents to prove that the petitioner has no financial capacity. Hence, the contentions of learned counsel are not tenable.

⁴ Basavaraj vs Padmavathi, Two Judges bench (Hon'ble Sri Justice M.R.Shah and Hon'ble Sri C.T.Ravikumar) Supreme Court held in Civil Appeal Nos. 8962-8963 of 2022, on 5 January, 2023.

⁵ P.Atchuta Rama Raju and others Vs. P.Venkata Subbaiah and others reported in 2005 (3) ALD 792

- 68. Thus, all the contentions of learned counsel are not sustainable.
- 69. Except for the self-testimony of RW1, the first respondent did not provide any material to disprove the case of petitioner.
- 70. Coming to the case of second respondent, he strenuously contended that in collusion between the petitioner and first respondent, the present I.P. was filed, and except for that, there are no real promissory note transactions. In order to prove his case, he examined himself as RW2. He reiterated the averments of counter in his chief examination affidavit. The first respondent cross-examined him. Petitioner cross-examined him in part, and at request, further cross-examination is deferred. Thereafter, he did not turn up before the court, though ample time was given, and finally, this court closed his evidence. Thus, he did not turn up before the court to face crossexamination by the petitioner. Therefore, his evidence is incomplete. Hence, his evidence does not need to be considered. Even if it is considered, it is nothing but his self testimony. Except for his self testimony, he did not place any material to disprove the transaction under promissory notes/Exs.P1 and P2.
- 71. Apart from evidence, the learned counsel for second respondent would contend that the petitioner has no financial capacity to lend such a huge amount, and therefore, the lending amount under promissory notes/Exs.P1 and P2 is highly doubtful.
- 72. PW1 categorically stated in his evidence that he is doing cultivation in Ac. 13.00 cents of his joint family property, and while giving evidence, he brought a photostat copy of document as the originals were with the Bank of India. Whatever the evidence of PW1,

nowhere in the pleadings of either the first respondent or second respondent disputed the financial capacity of petitioner. Since the financial capacity of petitioner is not in question, non placing of documentary evidence to show the financial capacity of petitioner is not fatal.

Findings on first and second ingredients:

On the other hand, the petitioner proved promissory notes/Exs.P1 and P2 transactions through the evidence of PWs 1 to 3. Hence, it is held that the petitioner proved that the first respondent borrowed amounts and executed promissory notes/Exs.P1 and P2 and thereby, she is indebted to petitioner. Thus, the petitioner proved the first and second ingredients of Sec. 9 of the Act.

Third ingredient under Section 9 of the Act:

- In so far as third requirement is concerned, Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant to the present facts of the case.
- 75. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) and (b) of the Act. It is worthwhile to re-produce Section 6(1)(a) to (c) of the Act hereunder:
 - **6. Acts of insolvency.**—(1) A debtor commits an act of insolvency in each of the following cases, namely:—
 - (a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

- (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
- (c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.
- 77. As seen from the sale deed/Ex.P3, property was not transferred to his creditors as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.
- 78. As per Section 6(1)(b) of the Act, where a transfer of property or of any part thereof is made with intent to defeat or delay his creditors, it amounts to act of insolvency. In the present case, the petitioner would contend that the first respondent alienated the schedule properties in favour of the second respondent under a registered sale deed dated dt.7.7.2014 with an intention to defeat and delay his claim, and thereby, the first respondent committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, the said provision is relevant to the present case.
- 79. It is the case of petitioner that with intend to defeat or delay his creditors, first respondent executed a registered sale deed in favour of second respondent involving schedule property. On the other

hand, the first respondent denied the execution of sale deed, contending that it was obtained by the second respondent by force and putting her under pressure and coercion, and as such, she filed a suit for cancellation of sale deed. The second respondent admitted execution of sale deed, contending that he paid the sale consideration and was a bona fide purchaser, and in view of the collusion between the petitioner and first respondent, he filed a suit for declaration.

- 80. In order to prove defence, the first respondent examined himself as RW1. She reiterated the averments of counter in her chief examination affidavit. In her cross-examination, the petitioner and second respondent elicited admitted facts, such as filing of suits in O.S. 362/2015, O.S. 273/2014, and O.S. 393/2014, purchase of schedule property from Aluri Sankara Rao, conversion of schedule property into non-agricultural land, etc. Based on the evidence of PW1, the sale transaction under Ex.P3 cannot be held invalid.
- 81. Except for her self testimony, the first respondent did not adduce any other evidence.
- 82. On the other hand, the second respondent examined himself as RW2. He reiterated the averments of his counter in his chief examination affidavit. The first respondent tried to elicit non-passing of consideration under the sale deed/Ex.P3 transaction. However, the second respondent contended that he is a bonafide purchaser for valid consideration. Whether the second respondent is a bonafide purchaser or not, whether the sale deed is valid or not, etc., will not be determined in this insolvency petition proceedings. After adjudging the first respondent as insolvent, separate proceedings will be held under

U/Sc. 53 and 54 of the Act for annulment of sale deed transaction. The contentions of second respondent are appropriate in that enquiry.

Whether the first respondent has other properties even after execution of sale deed?

- 83. To defeat the claim of petitioner, the learned counsel for second respondent would argue that the first respondent has some other property and therefore, she shall not be adjudged as insolvent and his sale deed shall not be annulled. In order to prove the same, he relied upon the evidence of RW1.
- In the cross-examination of RW1, he elicited that she has 245 sq. yards at Guntur. For better appreciation of the case, a relevant portion of evidence of RW1 is reproduced here under:

"It is true apart from the schedule property I had other property for an extent of 245 sq. yards at Guntur. The said property is not shown in the present petition. It is true I purchased the said property of 245 sq. yards under a registered sale deed 19.4.2014 vide Doc.No.4200/14."

"It is true I owned 245-6/9 sq. yards of house site purchased from one Razia Begum and Karishma."

"Petition schedule property only remains as on the date of filing of this petition and other properties were sold."

- 85. Thus, in the cross-examination by second respondent, RW1 supports his version. Similarly, in the cross-examination by the petitioner, she supported the version of petitioner testifying that he has no other property except petition schedule property. Thus, there is no consistency in the evidence of RW1. Therefore, based on her evidence, the court cannot arrive at the conclusion that the first respondent has some other valuable property.
- 86. It is germane to note that the first and second respondents filed suits against each other. Third party also filed a suit against

respondents 1 and 2 for specific performance. Now the question before the court is whether these suits prevent the petitioner from seeking the court to adjudge the first respondent as insolvent or not.

- 87. Till now, the sale deed/Ex.P3 is in force. However, it is questioned by the first respondent by filing a separate suit. Similarly, the second respondent filed a suit based on his sale deed. It is also pending before the competent court. Till now, all suits are pending. As of now, the sale deed is in force, and it was executed by the first respondent. So, this petition is maintainable. In case the sale deed is cancelled by a competent court, the first respondent may recourse her remedy under Section 35 of the Act.
- As of now, the sale deed is in force, and therefore, the pendency of suits will not debar the petitioner from seeking relief to adjudge the first respondent as insolvent.
- As held above, the petitioner established the debt of first respondent. The respondents 1 and 2 did not contend that after the sale deed/Ex.P3, first respondent discharged the whole or any part of debt of petitioner. As a result, even after the sale deed is executed, the amount owed by the first respondent to the petitioner remains. Rather than repaying the debt, first respondent executed a sale deed denying promissory notes/Exs.P1 and P2 attributing untenable allegations against the petitioner and promissory notes. All these facts go to show the conduct of first respondent, that she alienated the schedule property to defeat and defraud the petitioner.
- 90. In the light of the aforesaid facts and circumstances and the aforesaid discussion, it is held that the petitioner established the act of insolvency of first respondent in executing the sale deed/Ex.P3

by ignoring and denying the debt, which constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

Findings on act of Insolvency:

- 91. All the above facts and circumstances establish that the act of the first respondent in executing register sale deed/Ex.P1, by ignoring and denying the debt, constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.
- 92. In view of the facts and circumstances and the aforesaid discussion, it is held that the first respondent is liable to be adjudged as insolvent. Accordingly, this point is answered.

RESULT:

93. In the result, the petition is allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 31st day of August, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

P.W.1: Vasantha Srinivasa Rao

P.W.2: Sadam Venkateswara Rao

P.W.3: Narra Visweswara Rao

P.W. 4: Vanga Brahma Reddy

For Respondents:

R.W.1: Bonthu Suneetha

R.W.2 : Sarabu Satyannarayana

DOCUMENTS MARKED

For Petitioner:

Ex.P1: Promissory note dt.12.1.2014 executed byR1 in favour of petitioner for Rs.7,00,000/-.

Ex.P2: Promissory note dt.26.1.2014 executed by R1 in favour of petitioner for Rs.5,00,000/.

Ex.P3: Registered sale deed dated 7.7.2014 executed by R1 in favour of R2 vide Doc.No.8571/2014.

For Respondents:

Ex.R1: VAT registration certificate of Maruthi Cotton Traders, dt.10.3.2014.

Ex.R2: VAT registration certificate of Lakshmi Narasimha Traders, dt.4.9.2015.

Ex.R3: Office copy of the plaint in O.S.No.362/2015 on the file of Hon'ble IV Addl. District Judge, Guntur.

Ex.R4: Registered sale deed executed by R1 in favour of R2 vide Doc.No.13125/14.

Y. GOPALA KRISHNA,

1 Addl. Senior Civil Judge, Guntur.

// True copy//

I A.S.C.J.,

GUNTUR.

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE'S COURT GUNTUR

Friday, the 13th day of October, 2023

INSOLVENCY PETITION NO.17/2020

Between:

Abbarla Chinna Narasimha Rao, S/o Pamuleti, Cultivation, aged about 58 years, Hindu, R/o 14-64-11, Flat No.504, Thulluri Towers, Morriespet, Tenali, Guntur District.

...PETITIONER.

AND

- 1. Kola Chitti Babu, S/o Nalla Pinnaiah @ Pinnaiah, Hindu, aged about 52 years, R/o Door No.11-71/1, Vejendla Village, Chebrole Mandal, Guntur District.
- 2. Kola Hanuman, S/o Kola Chittibabu, Hindu, aged about 29 years, R/o Door No.11-71/1, Vejendla Village, Chebrole Mandal, Guntur District.
- 3. Official Receiver, District Court Complex, Guntur.

...RESPONDENTS.

This petition coming on 31.8.2023 for final hearing before me in the presence of Sri B. Vijaya Kumar, Advocate for petitioner and Sri A. Rama Mohana Rao, Advocate for R1 and R2, and the matter having stood over for consideration till this day, this Court made the following:-

:: O R D E R ::

- 1. This insolvency petition is filed for following reliefs:
 - i) to adjudge the first respondent as an insolvent,
 - ii) to vest the petition schedule properties with the Official Receiver for administration,
 - iii) to direct the Official Receiver to apply U/Sec.53 and 54 of Provincial Insolvency Act after the 1st respondent is adjudicated as an insolvent and set aside the alienation of Regd. Sale Deed dated 16.9.2019 under registered gift deed document bearing No.2501/2019 of Joint Sub Registrar, Chebrolu before the Insolvency Court.
 - iv) for costs of the petition and
 - v) to pass such other reliefs as the Court deems fit and proper in the circumstances of the case.

- 2. The main case of the petitioner, in brief, is that,
 - i) respondents 1 and 2 are father and son. Schedule property is situated in Vejendla village.
 - ii) The first respondent borrowed a sum of Rs. 3,00,000/from the petitioner on 25.7.2018 to discharge his sundry debts
 and executed a promissory note in favour of petitioner, agreeing
 to repay the same with interest at 24% p.a. Subsequently, in spite
 of repeated demands, the first respondent failed to repay the debt.
 - iii) Recently, he came to know that the first respondent executed a registered sale deed dated 16.9.2019 in respect of schedule property as if it were sold to his son (second respondent). Except for petition schedule property, the first respondent has no other properties. Respondents 1 and 2 colluded and brought into existence an alleged sale deed dated 16.9.2019 with the evil intention of evading the debts of the creditors of first respondent, including the petitioner. The alleged sale deed is collusive and does not bind the petitioner. Hence, the present petition is filed to adjudge the first respondent as insolvent.
- 3. On the other hand, respondents 1 and 2 resisted the claim of the petitioner by filing a counter. The first respondent filed a counter. The second respondent adopted the counter of first respondent. They denied the borrowing of amount and the execution of promissory note. The main case of respondents, in brief, is that:
 - i) first respondent did not borrow any amount, much less Rs. 3,00,000/-. He did not execute any promissory note, as alleged by the petitioner.
 - ii) On 31.10.2011, first respondent borrowed Rs. 5,00,000/from Bitra Kanaka Durga and executed a registered mortgage

deed in her favour by mortgaging schedule property as security for the said debt. Secured debts are not covered under the Act as they have to be discharged first.

- iii) The said Kanaka Durga filed O.S. 423/2016 against the first respondent before Prl. Senior Civil Judge, Guntur. The said suit was decreed on 14.6.2018. Later, Kanaka Durga filed a final decree petition in I.A.No. 476/2019. At that stage, the first respondent compromised with Kanaka Durga. As per the said compromise, the first respondent borrowed Rs. 14,00,000/- from his son (second respondent) and paid the same to Kanaka Durga. Accordingly, full satisfaction was recorded in the said final decree proceedings.
- iv) The second respondent availed of a loan of Rs. 4,21,658/on 9.9.2019, Rs. 8,50,000/- on 5.9.2019 from Axis Bank and
 ICICI Bank, respectively. Thus, the second respondent borrowed
 Rs. 13,21,658/- to discharge the mortgage debt of his father (first
 respondent). The second respondent transferred the said amount
 of Rs. 14,00,000/- to Kanaka Durga through account transfer.
- v) In view of the same, the first respondent executed a registered sale deed dated 16.9.2019. Therefore, there is no collusion between the first respondent and the second respondent to avoid the alleged debt. Hence, they urged the Court to dismiss the petition.

4. Now the point for determination is :-

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

- 5. At the event of enquiry, the petitioner examined P.Ws. 1 to 4, while relying on Exs.P1 and P2. On the other hand, respondents examined R.Ws.1 and 2, and exhibited Exs.R.1 to R.8.
- 6. Heard arguments on both sides.
- 7. Perused the record.
- 8. Before embarking on the above point, it is apropos to mention the admitted facts observed by this court on perusal of pleadings and oral and documentary evidence of both parties are as follows:
 - i) originally, first respondent was the owner of petition schedule property. He executed a registered sale deed in favour of second respondent.
 - ii) Respondents 1 and 2 are father and son.
 - iii) Bitra Kanaka Durga filed a mortgage suit against the first respondent in O.S.No. 423/2016 on the file of Prl. Senior Civil Judge, Guntur. The suit was allowed by passing preliminary decree. Thereafter, Bitra Kanaka Durga filed a final decree petition in I.A.No.476/2019.

<u>POINT:-</u>

Whether the first respondent committed an act of insolvency; if so, is he liable to be adjudged as insolvent?

9. It is the case of petitioner that the first respondent borrowed Rs. 3,00,000/- from him on 25.7.2018 and executed a promissory note, agreeing to repay the same with interest at 24% p.a. Subsequently, instead of discharging debt, the first respondent registered a sale deed collusively in favour of his son (second respondent) and conveyed schedule property with an intention to

defraud the claim of the petitioner; thereby, the first respondent committed an act of insolvency.

10. In oppugnation, respondents 1 and 2 refuted the case of petitioner, contending that the first respondent never borrowed any amount or executed any promissory note. Further, they contended that the sale deed is a genuine transaction; and that the second respondent discharged the decree debt of first respondent.

Whether creditor IP is maintainable without obtaining a money decree?

- 11. In addition to the above, learned counsel for respondents 1 and 2 questioned the maintainability of this petition by arguing that, as the debt of the petitioner is not qualified by decree, by the date of presentation of this petition or later, this IP is not maintainable under law. As learned counsel questioned the maintainability of the case, it is apropos to discuss the same first before going into examining the above point.
- 12. In view of the contentions of respondents, Section 9 of the Act has to be examined carefully. It is discernible to reproduce Section 9 of the Act hereunder:
 - **9. Conditions on which creditor may petition.**—(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—
 - (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
 - (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
 - (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed,

- the insolvency petition may be presented on the day on which the Court re-opens.
- (2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.
- 13. The above provision mandates compliance with three conditions: one is that a debt of Rs. 500/- or more is owed to a creditor or two or more creditors; second is that such debt is a liquidated sum payable immediately or at a certain future time; and third is that the petitioner shall file the petition before the expiration of three months from the date of the act of insolvency. Except for these three conditions, it does not mandate the filing of a suit or the obtaining of a decree for filing an insolvency petition. In the normal sense, creditor includes decree holder, and debtor includes judgment debtor.
- 14. As seen from the above provision, obtaining a decree against the debtor is not a condition precedent to filing an insolvency petition. When the provision does not require a money decree for instituting a petition under Section 9 of the Act, the non-obtaining of a money decree does not prevent the petitioner from filing an insolvency petition.
- 15. In Dara Mohan Muralidhar and Others Vs. B.Nirmala Devi and another¹, the Hon'ble High Court held at para no. 22 as follows:-
 - [22] None of the conditions under Section 9 speaks about filing of a suit and obtaining a decree for filing an insolvency petition and at the same time, Section 2

^{1 2015} LawSuit(Hyd) 1121

Clause (1)(a) defines the 'creditor' as "it includes a decreeholder, 'debt' includes a judgment-debt, and 'debtor' includes a judgment- debtor". In view of the definition of the creditor, a person, who lent amount, is also a creditor as defined under Section 2(1)(a) of the Act. The word 'creditor' is much wider than a mere decree-holder and when I turn to Section 9, it is clear and it is not disputed that for the purposes of Section 9(a) to (h) the expression "Creditor" used in that section is used in its wider connotation and would include not only a decree-holder but also an assignee of a decree-holder. Therefore, the person, who advanced money to the first respondent, the petitioners are entitled to initiate proceedings under Section 9 of the Act since obtaining decree against the debtor is not a precondition to adjudge the first respondent as insolvent. Therefore, dismissal of the application on the ground that the petitioners are not the judgment-debtors and failed to obtain any decree by filing a suit is not a ground to dismiss the Insolvency Petition but the first appellate Court on erroneous appreciation of law dismissed the Insolvency Petition, setting aside the order passed by the Additional Senior Civil Judge at Eluru.

(Emphasis added)

16. The above authority crystallizes that obtaining a decree is not a pre-condition to filing a creditor IP or adjudging the debtor as insolvent. The above authority is squarely applicable to the present case. In view of the above authority, the submissions of learned counsel for respondents are not sustainable.

Compliance with the first and second requirements under Section 9 of the Act:

17. **Turning to the above point**, in so far as compliance of first and second requirements under Section 9 of the Act, it is the case of petitioner that the first respondent borrowed Rs. 3,00,000/- on

- 25.7.2018 for the purpose of discharge of debts and executed a promissory note, agreeing to repay the same along with interest at 24% p.a. Per contra, respondents strenuously refuted the case of petitioner by contending that the first respondent never borrowed any amount and executed a promissory note.
- In view of the rival contentions of both parties and to 18. comply with the first and second requirements under Section 9 of the Act, the burden of proof is upon the petitioner to prove that the first respondent borrowed amount and was indebted to the petitioner. In order to prove the case, the petitioner examined himself as PW1. He reiterated the averments of petition in his chief examination affidavit. Respondents cross-examined him. In the cross-examination, PW1 testified that he is doing wholesale vegetable business and earning Rs. 1,000/- to Rs. 1,500/- per day; and that he incurred an amount of Rs. 10,000/- towards his monthly expense. He further deposed that he is maintaining account in State Bank of India, Ithanagar Branch, Tenali. He further deposed that there is a recital in the sale deed/Ex.P2 that the second respondent has transferred an amount of Rs. 13,91,000/to the account of Bitra Kanaka Durga on behalf of first respondent towards the payment payable by first respondent to the said Kanaka Durga. Further, he deposed that he came to know through the documents filed and on enquiry along with the counter that the first respondent is liable to pay an amount of Rs. 13,91,000/- to Bitra Kanaka Durga as per the preliminary decree in O.S. 423/2016.
- 19. Except the above, respondents did not pose any question on execution of promissory note/Ex.A1 and lending amount there under.

- 20. Besides the above evidence, the petitioner examined Dasari Srinivasa Rao as PW2. He claims to be the scribe of a promissory note. He supported the case of petitioner regarding the lending amount and the execution of promissory note. He further stated in his chief examination that the first respondent borrowed Rs. 3,00,000/- on 25.7.2018 for discharging his sundry debts and executed a promissory note in the presence of himself and attestors J.Surendra and D. Ramana. Respondents cross-examined him. Except putting suggestions, nothing favourable answers were elicited from him.
- 21. In addition to the above, respondents 1 and 2 put their defence by way of suggestions. Of course, they denied the same.
- 22. The evidence of PWs 1 and 2 evinces that the first respondent borrowed Rs. 3,00,000/- on 25.7.2018 and executed a promissory note.
- 23. In order to disprove the case of petitioner, learned counsel for respondents 1 and 2 would submit that a promissory note was obtained in a private chit transaction, and therefore, based on said promissory note/Ex.P1, present I.P. is not maintainable.
- 24. The learned counsel rightly submitted that where a promissory note is obtained in a private chit transaction, based on it, I.P. cannot be initiated by third party. As seen from the evidence of PW1, respondents 1 and 2 suggested that the petitioner is doing private chit business and first respondent participated as a subscriber; and that at the time of disbursing the prize amount, the first respondent obtained a promissory note and later filed the present petition by misusing the same. For better appreciation of case,

relevant suggestions posed in the cross-examination of PW1 is reproduced hereunder:

"It is not true to suggest that I am doing private chits; business. It is not true to suggest that R1 participated as subscriber in the chits maintained by me."

"It is not true to suggest that R1 indebted an amount of Rs.10,000/- only to me."

"It is not true to suggest that at the time of disbursing price amount of chit, I have obtained blank promissory notes of R1 and by misusing those promissory notes filed the present I.P."

- 25. Thus, the respondents has taken defence in the cross-examination of PW1. But in fact, this defence is totally absent in the pleadings. It is well settled that any amount of evidence that may be adduced without a foundation in the pleading would be of no avail². Therefore, the new defence set up in the cross-examination of PW1 cannot be looked into. Consequently, the arguments of learned counsel do not hold water.
- 26. For argument's sake, if it is construed that respondents are allowed to take such a defence, now the question before the court is whether the present I.P. is maintainable or not. As seen from the record, particulars of chit allegedly run by the petitioner, such as the name of the chit, number of installement, prize amount, value of chit, number of subscribers, etc., are not furnished. Further, respondents 1 and 2 did not file any chit pass book, etc., to show that first respondent is one of the subscriber of the alleged chit. Except putting suggestions in the cross-examination of PW1, respondents 1 and 2 did not place any material evidencing that petitioner is running private

² Bollineni Srihari Rao Vs. Manukondu Ramadevi and others : MANU/HY/0320/2018

chits, in which the first respondent was a subscriber and he became a successful bidder, and that petitioner obtained blank promissory notes from him at the time of disbursing the amount.

- 27. In view of the aforesaid facts and circumstances, it is held that respondents 1 and 2 did not place any material to substantiate their new plea taken in the cross examination of PW1. Therefore, the contentions of learned counsel are not tenable.
- 28. The evidence of PWs 1 and 2 corroborates each other regarding the execution of promissory note and lending amount there under. Further, respondents did not attribute any animosity against PW2 to give false evidence against the first respondents. Moreover, respondents did not pose any questions to PW1 regarding the execution of promissory note and lending amount thereunder. On thorough scrutiny of the evidence of Pws 1 and 2, this court has not found a single instance to doubt the case of petitioner. Thus, the petitioner established the lending amount and execution of promissory note through the evidence of PWs 1 and 2.
- 29. It is significant to note that in the cross-examination of RW1(first respondent), he admitted his signature on a promissory note. Thereby, he admitted the execution of promissory note. In Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal³, the Hon'ble Apex Court held that,

Once execution of the promissory note is admitted, the presumption under section 118(a) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defence.

³ AIR 1999 SC 1008

30. In Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm & Ors.⁴, it was held that,

"Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the Court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal. ..."

- 31. The above authorities and Section 118(a) of the Negotiable Instrument Act make it very clear that, when execution of a promissory note is admitted, it is presumed that consideration was passed under the promissory note. In view of the above jurisprudence and admission of the first respondent, the presumption is in favour of the petitioner that consideration was passed under the promissory note. Regardless of presumption, the petitioner established the execution of promissory note and passing of consideration thereunder through the evidence of PWs 1 to 3. Thus, the petitioner discharged his burden. Now, the onus shifts to the respondent.
- 32. On the other hand, respondents 1 and 2 seriously recusant borrowing amount under promissory note and acquaintance with the petitioner. But surprisingly, in the cross-examination of PW1, they admitted their acquaintance with the petitioner by putting suggestions that the first respondent is one of the subscriber in the chits being run by the petitioner. Similarly, in the chief-examination affidavit of first respondent (RW1) has taken plea of private chit was run by petitioner,

^{4 2008 (8)} SCALE 680

in which the first respondent is one of the subscriber, and in that transaction, the petitioner obtained a blank signed promissory note and cheque from him. Thus, he admitted acquaintance between themselves and the petitioner.

33. To disprove the case of petitioner, respondents 1 and 2 examined themselves as RWs 1 and 2. They reiterated the averments of counter in their respective chief examination affidavits. In the cross-examination, RW1 admitted his signature on the promissory note. For better appreciation of the case, the relevant portion of the evidence of RW1 is reproduced here under:

"Witness identified his signatures on Ex.P1/promissory note.(The learned counsel confronted Ex.P1/Promissory note to the witness.)"

- 34. But, contrary to the above, respondents have taken defence in the counter, disputing the promissory note. The above admission is sufficed to hold that the promissory note is validly executed.
- 35. As stated above, except taking a new defence during trial, respondents have not provided any material to substantiate the same except the self-testimonies of RWs 1 and 2. However, respondents have not placed any material to disprove the execution of promissory note, lending amount thereunder and rebut the presumption U/Sec.118 of N.I. Act.
- 36. On the other hand, the petitioner established the execution of promissory note and lending amount thereunder through the evidence of PWs 1 and 2. Hence, it is held that the petitioner, prima facie, established the lending amount and execution of promissory

note/Ex.P1. Thereby, the petitioner complied with the first and second requirements of Sec. 9 of the Act stated above.

ACT OF INSOLVENCY:

- As far as the third requirement is concerned, an insolvency petition shall be filed within 3 months from the date of act of insolvency. No doubt, this petition was filed on 13.12.2019, within three months from the date of execution of Sale deed/Ex.P2. Now the question before the court is, whether the execution of sale deed amounts to an act of insolvency or not?
- 38. Section 6 of the Act envisages an act of insolvency. The entire Section 6 is not relevant to the creditor insolvency petition. But Section 6(1) (a) to (e) is relevant. As far as the present case is concerned, Section 6(1)(a) and (b) are most relevant.
- 39. To adjudge the debtor as insolvent, the petitioner (creditor) shall establish the act of insolvency laid down under Section 6(1)(a) to (c) of the Act. For a better appreciation of the case, relevant provision is re-produce hereunder:
 - **6. Acts of insolvency.**—(1) A debtor commits an act of insolvency in each of the following cases, namely:—
 - (a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
 - (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
 - (c) if in India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

- 40. As far as Section 6(1)(a) is concerned, the meaning of transfer of benefit to creditors generally is that it transfers all or substantially all of his property to a third person for the benefit of his creditors generally or to composite debtors executing for the purpose of paying creditors. This situation arises when any transfer is made to a third party for the benefit of creditors generally, as covered under (a) of the Act.
- 41. As seen from the sale deed/Ex.P2, property was not transferred to creditors of first respondent as envisaged under Section 6(1)(a) of the Act. So, Section 6(1)(a) is not applicable to the present case.
- As per Section 6(1)(b) of the Act, where a transfer of property or any part thereof is made with intent to defeat or delay his creditors, it amounts to an act of insolvency. In the present case, the petitioner would contend that the first respondent executed a sale deed dated dt.16.9.2019 in favour of his son (second respondent) with fraudulent intention to defeat his claim, and thereby, the first respondent committed an act of insolvency, and hence, the first respondent is liable to be adjudged as insolvent. So, this provision is relevant to the present case.

Maintainability of an insolvency petition:

43. In the course of arguments, learned counsel for respondents questioned the maintainability of this petition on three grounds: one is that a single creditor cannot initiate an insolvency petition; second is, the petitioner contravened Sec.13(2) of the Act by not furnishing the particulars of first respondent; and third is that the second respondent became a secured creditor on purchasing property, and therefore, the insolvency petition is not maintainable against him.

- In so far as the first contention of learned counsel is concerned, the learned counsel questioned the maintainability of this petition by drawing attention of this court to Section 6 of the Act and submitted that there is only single creditor in the present insolvency petition, and therefore, it is not maintainable. To buttress his contention, he relied on **Pydimarri Venkateswarlu Vs. Pydimarri Jalamma**, reported in AIR 1969 AP 318.
- 45. In view of the arguments of learned counsel, the case and evidence of PW1, Section 6(1)(b) of the Act have to be examined carefully. Admittedly, nowhere in the pleadings (petition) and evidence, the petitioner did not furnish particulars of other creditors. However, simply because the petitioner did not disclose the particulars of other creditors, it does not mean that the first respondent has no other creditors. Irrespective of the same, the question before the court is, whether insolvency petition maintainable where there is only one creditor or not?
- 46. Relying on Section 6(i)(b) of the Act, learned counsel vehemently argued that a single creditor cannot file an insolvency petition. In view of his arguments, it is fruitful to reproduce Section 6(i)(b) of the Act again hereunder:

Section 6 -(1) A debtor commits an act of insolvency in each of the following cases, namely:—

- (b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his **creditors**;
- The learned counsel emphasized the above word "Creditors". Admittedly, the petitioner, i.e., one creditor, alone filed the present insolvency petition. Moreover, there is no material record to show the first respondent is indebted to how many creditors.

- 48. There are conflicting of judgments on the topic of whether a single creditor can maintain the insolvency petition? In Pydimarri Venkateswarlu's case stated supra, the Hon'ble High Court interpreted the provisions of Section 6(1)(b) of the Act and held that for a transfer to be brought under Clause (b), it is necessary that it should have been effected with an intent to defeat or delay the whole body of creditors and not a single creditor. Further, it is held that this clause is not applicable where the transfer was affected to defeat or delay a single creditor. Relying on this precedent(Pydimarri Venkateswarlu's case) and Sanjeevi Reddy Vs. Ellappa Reddy⁵, our High Court held in Gutta Niramala Vs. Gutta Nageswara Rao and others⁶, that unless it is proved that alienation is, to defeat the genuine claim of general body of creditors, debtor cannot be adjudged as an insolvent.
- But, earlier there is Division Bench judgment of our hon'ble High Court in between G.Ramachandar Vs. Collector, Excise, Hyderabad and another⁷. Wherein, it is held that Section 6 or 7 also entitles an individual to launch proceedings under the Act. The said Division Bench judgment is not referred to in Gutta Nirmala's case stated supra. However, the said division bench judgment relates to the debtor IP.
- 50. In Tadikamalla Venkata Ramana Kishore and another Vs. P.Santhakumari and others⁸, the Hon'ble Composite High Court held that a single creditor can maintain a petition under Section 9 of the

⁵ AIR 1967 AP 243

^{6 2010} LawSuit(AP) 988

⁷ AIR 1977 AP 346

^{8 2015 (2)} LS 361

Act, though the transfer of property is to defeat the claim of the single creditor.

In view of the Division Bench judgment stated supra and Tadikamalla Venkata Ramana Kishore's case stated supra, the present petition is maintainable, even though it was filed by a single creditor. Hence, the contentions of learned counsel for respondents are not sustainable.

Whether the petitioner contravened Section 13(2) of the Act:

- 52. Further, learned counsel for respondents invited the attention of this court to the averments of petition and Sec.13(2) of the Act and submitted that petitioner contravened the provision by not submitting particulars of the debtor (first respondent), such as income source, etc., and on this ground this petition is liable to be dismissed.
- The learned counsel rightly submitted that the petitioner did not furnish income source and occupation particulars of first respondent in the petition. But, the question before the court is, whether the petitioner contravened Section 13(2) of the Act, as argued by the learned counsel. Section 13 of the Act enumerates the contents of petition. Sub-Section (1) relates to insolvency petition filed by a debtor, while Sub-Section (2) relates to insolvency petition filed by a creditor.
- 54. It is worthwhile to reproduce Subsection (2) of Section 13 of the Act hereunder:

Section 13(2): Every insolvency petiiton presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in Clause (b) of sub-section (1), and shall also specify, –

(1) The act of insolvency committed by such debtor together with the date of its commission; and

- (2) The amount and particulars of his or their pecuniary claim or claims against such debtor.
- 55. Clause (1)(b) of Sec.13 of the Act is stated hereunder:

"the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody."

- 56. On combined reading of the above, it vividly clears that Sec.13(i)(b) of the Act mandates that insolvency petition presented by a debtor shall contain.
 - (1) The place where the ordinarily resides or
 - (2) Carries on business or
 - (3) Personally works for gain or
 - (4) In case he has been arrested or imprisoned, the place where he is in custody.
- 57. Except the above, it does not mandate that the petitioner shall furnish the income particulars, etc., of the debtor. Of course, it mandates to mention place of residence, carrying business, etc., for the purpose of fixing jurisdiction of the court.
- As seen from the petition, the petitioner categorically mentioned the address particulars of debtor(first respondent). After thorough verification of the petition, this court has not found any contravention to Section 13(2) of the Act, as argued by the learned counsel. Therefore, the contentions of learned counsel are not tenable.
- 59. Learned counsel further invited the attention of this court to mortgage deed, preliminary decree, final decree petition, full satisfaction memo, computer-generated copy of account statements of ICICI Bank, registered sale deed (Exs.R1 to R8), and Sec. 9(2) of the Act and submitted that the second respondent discharged the mortgage debt during pendency of final decree petition and obtained

the sale deed; and that as he purchased the same for valid consideration and he steps into the shows of secured creditor, this petition is not maintainable against secured creditor or secured property. Further, learned counsel would submit that no insolvency petition can be filed by a secured creditor. In view of the arguments of learned counsel, the question before the court is whether the secured creditor can maintain an insolvency petition or not.

- 60. In view of the submissions of learned counsel, it is noteworthy to reproduce Section 9(2)of the Act hereunder:
 - Sec.9(2): If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were as unsecured creditor.
- 61. The above provision does not speak that no secured creditor shall file an insolvency petition. But it enunciates that if a secured creditor files a creditor I.P., he has to relinquish his security for the benefit of other creditors.
- Indisputably, there is no need for the secured creditor to file creditor I.P. as he has first charge over the property. Simply because he has first charge, it cannot be held that he shall not file a creditor I.P. or IP is not maintainable against charged property
- 63. Coming to the present case, if at all Exs.R1 to R8 are taken into consideration, it reveals that the first respondent mortgaged the property to the third party, and later, the mortgagee obtained a preliminary decree. Thereafter, he filed a final decree petition. During

the final decree petition, the second respondent discharged the debt and obtained a sale deed from the first respondent. Except that, the mortgage is not transferred. Therefore, the second respondent cannot claim rights of subrogation.

- 64. For instance, if it is construed that he has a right of subrogation, the Provincial Insolvency Act does not prevent the secured creditor from filing a creditor insolvency petition against the debtor. Further, it does not prevent from filing of an Insolvency Petition by an unsecured creditor on alienation of secured property. Of course, mortgagee has first charge over the property. Viewed from any angle, the contentions of respondents are not tenable.
- 65. **Turning to the act of insolvency**, it is the case of petitioner that the petition schedule property is very valuable property, but the sale deed was executed collusively for Rs. 13,91,000/- in favour of second respondent, who is the son of first respondent, to defeat and defraud his claim. On the other hand, respondents strenuously refuted the claim of the petitioner, contending that the second respondent discharged the mortgage debt of first respondent during final decree proceedings and obtained a sale deed for that amount, and therefore, no malafides can be attributed to said transaction
- of the petitioner rightly contended that where schedule property is a hugely valuable property but a sale deed was obtained for a meager amount, it is one of the circumstances to doubt the genuineness of the transaction. To substantiate the claim, the petitioner examined himself as PW1. In support of his version, he examined PW2. Except for their oral testimonies, the petitioner did not place any market value certificate/valuation certificate of schedule

property, evidencing that it is worth about more than Rs. 13,91,000/-. Further, he did not examine the neighbours of the schedule property or the persons in the vicinity of the plaint schedule property to establish schedule property is worth about more than Rs. 13,91,000/-. Thus, the petitioner did not place any material to substantiate his plea that schedule property is worth about more than sale consideration referred in the sale deed.

- 67. Indisputably, respondents 1 and 2 are father and son. Simply because there is relationship between respondents, sale transaction cannot be doubted blindly. It is the specific case of respondents that second respondent discharged mortgage debt of first respondent during final decree proceedings and for that amount, sale deed was obtained. To substantiate their case, respondents 1 and 2 were examined as RWs 1 and 2.
- 88. Ex.R1/Certified copy of registered mortgage deed reveals first respondent mortgaged the schedule property with Bitra Kanaka Durga for Rs.5,00,000/-.
- 69. Ex.R2/Certified copy of preliminary decree in O.S.No. 423/2016 on the file of Principal Senior Civil Judge, Guntur, reveals that Bitra Kanaka Durga filed mortgage suit against first respondent herein and the said suit was decree on contest by passing preliminary decree.
- 70. Ex.R3/Certified copy of final decree petition in I.A.No. 476/2019 shows that Bitra Kanaka Durga filed petition to pass final decree.
- 71. Ex.R4/Certified copy of full satisfaction memo reveals that full satisfaction memo filed by Bitra Kanaka Durga discloses that she

received Rs.14,00,000/- from first respondent herein towards full and final settlement.

- 72. Ex.R5/computer-generated copy of Axis Bank does not discloses availing of bank loan. Ex.R6/computer-generated copy of ICICI Bank reveals second respondent availed personal loan of Rs. 8,50,000/-. Ex.R7/Account statement of HDFC bank of second respondent reveals that RTGS transaction of Rs. 7,00,000/- from the account of second respondent to Bitra Kanaka Durga on 16.9.2019. Except Rs. 7,00,000/- transaction on 16.9.2019 appeared in Exs.R7, Exs.R5 and R6 do not disclose payment of amount to the account of Bitra Kanaka Durga.
- 73. Respondents heavily relied on the contents of sale deed/Ex.R8 contending that sale consideration was paid by the second respondent to Bitra Kanaka Durga towards discharge of preliminary decree debt. A certified copy of sale deed (Ex. R8) reveals that the second respondent paid Rs. 13,91,000/-, by account transfer, to Bitra Kanaka Durga on 16.9.2019 towards discharge of debt. Except for the recital, either the first respondent or second respondent did not show payment of Rs. 13,91,000/- by the second respondent to Bitra Kanaka Durga. Even RTGS transaction particulars were not referred to in the sale deed or furnished to the court.
- 74. Further, full satisfaction memo (Ex. R4) reveals that Bitra Kanaka Durga received Rs. 14,00,000/- from the first respondent herein, but not his son(second respondent). For better appreciation of the case, the relevant portion of recitals in Full Satisfaction Memo is reproduced hereunder:

"As per the compromise the plaintiff received an amount of Rs.14,00,000/- (Rupees Fourteen Lakhs only) from

- the Respondent/Defendant towards full and final settlement of the suit claim and agreed to not press the petition against the Respondent/Defendant."
- 75. The above recital devastated the contentions of respondents, who discharged mortgage debt. Except the above, the respondents did not place any material to substantiate their plea.
- 76. Indisputably, it is not the stage to decide whether the second respondent is a bonafide purchaser for valuable consideration, if so, whether his transaction will be protected under Section 55 of the Act? They will be determined during enquiry relating to the annulment of sale transaction.
- 77. It is already stated above that the petitioner established debt of first respondent. It is not in dispute that the first respondent executed a sale deed in favour of second respondent. But the first respondent did not discharge the whole or any part of the debt, even after sale transaction. Thus, the debt of first respondent due to the petitioner remains in existence even after the sale deed/original of Ex.P2. Instead of repaying the debt, the first respondent alienated his property under a registered sale deed, denying a promissory note.
- 78. All the above facts go to show the conduct of the first respondent that he alienated the property to defeat and defraud his creditors, including the petitioner.

Finding on the act of insolvency:

All the above facts and circumstances establish that the act of first respondent in executing register registered sale deed/Ex.P1, by ignoring and denying the promissory note debt stated above, constitutes an act of insolvency as envisaged under Section 6(1)(b) of the Act.

Finding on Point:

afor as insolvent. Accordingly, this point is settled.

RESULT:

81. In the result, the petition is allowed by adjudging the first respondent as insolvent. The period of discharge is six months from the date of this order. The petitioner is at liberty to move an application, after compliance with Sections 45 to 50 and 54-A of the Act, to annul the transfer of immovable property under Sections 53, 54, or 4 of the Act. The petition schedule property is vested with Official Receiver. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Typed to my Dictation, corrected and pronounced by me in the Open Court, on this the 13th day of October, 2023.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner:

P.W.1: Abbarla Chinna Narasimha Rao

P.W.2: Dasari Srinivasa Rao

For Respondents:

R.W.1: Kola Chitti Babu

R.W.2: Kola Hanuman

DOCUMENTS MARKED

For Petitioner:

- Ex.P1: Original Promissory note executed by 1st respondent in fav of petitioner.
- Ex.P2 Re istration extract of sale deed document No.2501/20 executed by 1st respondent in favour of 2nd respondent in respect opetition schedule property.

For Respondents:

- Ex.R1: Meeseva copy of regd. Mortgage deed bearing No.4186/2011 executed in favour of Bitra Kanaka Durga, mortgaging I.P. schedule property dt.31.10.2011.
- Ex.R2: Certified copy of decree in O.S.423/2016 on the file of Prl. Senior Civil Judge, Guntur.
- Ex.R3: Certified copy of I.A.476/2019 Final Decree petition together with Docket order dt.11.3.2019.
- Ex.R4: Certified copy of Full Satisfaction memo filedinI.A.476/2019 in O.S.4232016, dt.17.9.2019.
- Ex.R5: Computer generated copy of Axis Bank showing R2 borrowed Rs.4,21,658/- on 9.9.2019.
- Ex.R6: Computer generated copy of ICICI Bank showing R2 borrowed Rs.8,50,000/- on 5.9.2019.
- Ex.R7 : Computer generated copy of statement of account of R2.
- Ex.R8 : Certified copy of regd. Sale deed executed by R1 in favour of R2, dt.16.9.2019.

Y. GOPALA KRISHNA, 1 Addl. Senior Civil Judge, Guntur.

//True copy//

A.S.C.J.

GUNTUR.